

Biogr. 222^h

(Choate)

Parker

REMINISCENCES

LIFE OF CHAPMAN

REMINISCENCES

RUFUS CHOATE

REMINISCENCES

OF

RUFUS CHOATE.

REMINISCENCES

OF
RUFUS CHOATE



Yours with kindest
regards
Robertson





Aug 11. Boston
My dear Mr. Dur. Ry.
I am sorry to miss
you, yet glad that you
have found so cool, moist
& stimulant a spot as the
middle of the unplanted sea.

I hope the work will
be immortal & that it is
"Killer to my remains"
the things easy — but, by
to be, so do not let my eyes
shrink within a bias
are in flames & otherwise
has one form but

Yours affectionately
W. L. Chace

Note to the above.—This Letter, as was very usual with Mr. Choate's hasty notes, bears no date of the year. It was, however, written to the author in the summer of 1857.

The allusion to the "spot in the middle of the sea," refers to the place where his correspondent was staying at the time—a tongue of land shooting into the ocean quite a distance from the main land. The allusion to "the work" as being "kind to my remains," refers to the Author's book on Mr. Choate and other orators, called "The Golden Age of American Oratory," which was just then passing through the press.

E. G. P.

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REMINISCENCES

OF

RUFUS CHOATE,

THE GREAT AMERICAN ADVOCATE.

BY

EDWARD G. PARKER.

"Eloquentium jurisperitissimus, jurisperitorum eloquentissimus."

BRUTUS, *de Claris Oratoribus.*

NEW YORK:
MASON BROTHERS,

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TO
THE YOUNG BAR OF BOSTON,

WHO
LOVED RUFUS CHOATE,

This Volume
IS RESPECTFULLY DEDICATED,

BY
ONE OF THEIR NUMBER.

PLACE

TO

THE LIBRARY OF THE

book is inserted as a statement of Mr. Choate's
color and colored hand writing. Also,

to authenticate the identity of the person who
between the subject and the author of this work, and

to that extent, the author of this work is
for the authenticity of the statements.

None of Mr. Choate's statements are given in this
one or two hundred

book, as the whole of them is expected, will
be published by his family.

Many of his latest arguments, however, are
given; as some of them are preserved, it is believed,

only in the notes here published, and all of them are
scattered, and difficult to find.

To those gentlemen of the Bar who have sent
him their memorials of several of Mr. Choate's

arguments, the author desires to express his grateful
acknowledgments.

P R E F A C E.

THE lithographed letter facing the portrait in this book, is inserted as a specimen of Mr. Choate's singular and celebrated hand-writing. It happens, also, to authenticate the friendly relations which subsisted between the subject and the author of this work, and to that extent is the writer's credentials to the reader for the authenticity of these Reminiscences.

None of Mr. Choate's speeches are given in this book, as the whole body of them, it is expected, will be published by his family.

Many of his forensic arguments, however, are given; as some of them are preserved, it is believed, only in the notes here published, and all of them are scattered, and difficult to find.

To those gentlemen of the Bar who have sent him their memoranda of several of Mr. Choate's arguments, the author desires to express his grateful acknowledgments.

C. H. FAY, E.S.

The lithographed letter facing the portrait in this book is inserted as a specimen of Mr. Chas. Fay's handwriting and calligraphic writing. It happens also to authenticate the friendly relations which subsisted between the subject and the author of this work, and to show the writer's readiness to the reader for the authenticity of these Reminiscences.

None of Mr. Chas. Fay's speeches are given in this book, as the whole body of them, it is expected, will be published by his family.

Many of his political arguments, however, are given in some of them are preserved. It is believed, only in the notes here published, and all of them are scattered, and difficult to find.

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CHAPTER I.

INTRODUCTION TO REMINISCENCES.

THE HISTORIC POSITION OF RUFUS CHOATE.

RUFUS CHOATE is to be ranked as—The great American advocate. He was an able lawyer, a shining statesman, an all-accomplished man of letters ; but these are not his glory. His was that glory of which nightly he had dreamed, and for which he struggled daily from his first entrance upon active life—the glory of *the great advocate*, the ruler of the Twelve. To gain this particular attitude in history he made all his endowments and all his experiences contribute together.

He is just buried ; and the accordant voice of the press and of the public, however they may differ upon other points in his career, rises in applauding unison to crown him the first Advocate that has appeared upon this continent.

He will be remembered always as holding, in point of forensic advocacy, the same relation to America that Curran held to Ireland, and Erskine held to Great Britain. Erskine and Curran had the felicity to try some causes which elevated their court rooms into the dignity of national Senates. This will always give them in history a quasi statesman's position ; but tried as advocates, as omnipotent wielders of the jury, Choate is certainly worthy to rank as their peer.

The British advocate, Lord Erskine, lives still in form and stature before the eyes of his brethren of the bar, in

the monumental marble of his statue. Curran, the great Irishman, lies beneath a noble pile of granite, modeled after the tomb of Scipio ; to which his admiring countrymen bore his remains twenty-three years after his death in a foreign land. Rufus Choate will sleep in Mount Auburn ; and those who shall read upon the head-stone that simple name will remember that when he was placed there, Faneuil Hall flung open her gates at midday, and the first of living orators pronounced his eulogy in the ear of America.

In his lecture on the Study of History, addressed to Lord Cornbury, that oratoric philosopher Lord Bolingbroke, after describing the profession of the law as in its nature the noblest and most beneficial to mankind, in its abuse the most sordid and pernicious, rises to a high impulse of just enthusiasm as he exclaims : “ There have been lawyers that were orators, philosophers, historians ; there have been Bacons, and Clarendons, my lord ; there shall be none such any more, till, in some better age, men learn to prefer fame to pelf, and climb to the vantage-ground of general science.” This sentiment of Bolingbroke may be deemed very applicable to Rufus Choate.

There have been in our country perhaps half a dozen advocates of national repute as orators—Pinkney, Choate, Legaré, Wirt, Prentiss, and Ogden Hoffman ; all of them quite accomplished, well read, and widely learned, and blending with the severer qualities of the lawyer the higher and more kindling attributes of the man of genius. All of them have in some sense seemed impressed with the force of this opinion of Bolingbroke ; all of them have pursued ideal excellence rather than gold ; all of them have grasped that glory which is far better than gold. But among them two names stand advanced by general consent as chiefs at the bar, beyond dispute *facile principes*—two men who

united in themselves more of the essential qualities of the advocate-orator, and carried those qualities to a higher pitch of excellence than all the rest—William Pinkney and Rufus Choate. The mention of the one vividly suggests the other. They each had a conception of professional attainments of original breadth and splendor. They are the luminaries of the American bar, each regent of its firmament for his own hour—the morning and the evening star of its most effulgent day.

In some respects, too, Choate may be considered the pupil of Pinkney. He heard him and admired him in his own youth ; he has evidently studied him in his more mature discipline of himself, and in one prominent particular he closely resembles him—the mastery of a diction evidently learned up, labored, and made a specific object of constant effort.

But Pinkney, although a very great lawyer, was not so great an advocate. His power was displayed in most ample sweep, not before the twelve men of the people, but before the bench of judges of the United States Supreme Court. It was there he met his most formidable antagonists, there the ladies crowded to hear him, and upon him there the eyes of all the nation were often fixed.

Choate's preëminence, on the other hand, was in dealing with man as man ; not educated, ermined man, but the mere mortal man. Him, he could magnetize and master.

He accomplished this magical mastery not by a mere transitory eloquence of pathos and beauty, but by concentrating vast energies upon that specific object. A singularly powerful yet delicate organization, a capacious yet prompt understanding, law learning enough for a lord Chancellor, and a lettered eloquence which Hortensius might have admired ; all these were the forces in array when Choate ranged

his power in forensic action. And then, finally, Choate had genius, pure genius ; Pinkney had talent, great talent, but still only talent.

When Mr. Choate's arguments and addresses are published by his family, the world will at first be struck with their extravagance and eccentricity ; but a second thought will reveal their compact strength—the cruel steel beneath the purple velvet. And men will reason then, “How mysterious must have been that genius which could make these hyperbolical metaphors serve to strike conviction into grave human hearts !”

Some ten years ago I heard Daniel Webster, in Washington, say, “Rufus Choate is a wonderful man ; he is a marvel.”

Edward Everett, in his Faneuil Hall eulogy upon Mr. Choate, said, with discriminating panegyric, “‘There was no one who united to the same extent profound legal learning with a boundless range of reading, reasoning powers of the highest order, and an imagination which rose on a bold and easy wing to the highest heaven of invention. With such gifts and such attainments he placed himself, as a matter of course, not merely at the head of the jurists and advocates, but of the public speakers of the country. After hearing him at the bar, in the senate, or on the academic or popular platform, you felt that you had heard the best that could be said in either place.’ He said Choate's eulogy on Daniel Webster at Dartmouth College had never been equaled by any performance of that kind in this country. He might have added with truth, or any other country.”

At the meeting of the Suffolk bar, to take honorable notice of his death, Mr. Richard H. Dana, speaking what I know must have been lying unexpressed in the heart of

every lawyer present, said felicitously: "The 'golden bowl is broken,' the age of miracles has passed, the day of inspiration is over; the great conqueror, unseen and irresistible, has broken into our temple, and has carried off the vessels of gold, the vessels of silver, the precious stones, the jewels, and the ivory; and like the priests at the temple of Jerusalem, after the invasion from Babylon, we must content ourselves with serving vessels of wood, and stone, and of iron."

This describes in metaphor, but not extravagantly, the wide interval which all Mr. Choate's compeers recognized as existing between his advocacy and their own. He was the wizard of the court room.

It has also been truly said recently, by a writer of much observation of the world: "In power of severe reasoning, and what Whately calls 'discovering argument,' on any question, Webster was the equal of Choate, and no more than his equal; but in almost every other quality of a great orator, Webster, though great, was decidedly inferior to Choate. If the two men had been speaking on opposite sides of the same street, Choate would have drawn away Webster's audience, whether composed of the most common or the most learned men. That is the true test of the relative qualities of the two men as orators. We have heard the best public speakers of England, such as Brougham, Stanley, now Lord Derby, Gladstone, the late Sir Robert Peel, and others of less note; and though very able and eloquent speakers, they were not any of them the equals of Choate. Brougham, in his prime, would have come nearest to him, but not up to him. We doubt even whether Erskine himself, justly renowned as he was, ever possessed the eloquence of Choate, or the same command over juries. We have not the least doubt, how-

ever the remark may shock those who are imbued with too blind and ignorant a reverence for antiquity, *that if Demosthenes had had Choate in the place of Æschines for his competitor, in the great oration for the crown, he would have been beaten.*"

If Mr. Choate's death calls forth such panegyric, it is not surprising that when alive, and actually wielding "the law's whole thunder," he made his country look in upon his court room, and enjoyed a national renown.

I shall endeavor to present an outline of this great man's life, but especially and fully to present him as he was during the last fifteen years of his life. That was the period of my personal acquaintance with him. But I feel painfully how utterly impossible it will be to frame any descriptions adequate to give those who never saw or heard him a full impression of this *wonder*, for such he was. I have heard it said, and said truly, that although Webster was a greater man, yet he was of a species of man comparatively common ; but Choate, taken as a whole, viewing him as a man of action as well as reflection, was the rarest *genius* who has grown up on this side of the Atlantic. Of such a genius, how shall words tell all the story ?

In appearance he was, though in a different way, quite as marked as Webster. No one who once saw him could ever forget him. His head, and face, and figure all equally signalized him. That dark, Spanish, Hidalgo-looking head, covered with thick raven curls, which the daughters of the black-eyed races might have envied ; and the flash of his own sad eyes, sad but burning with Italian intensity—What canvas shall ever bid them live again, so that men shall see once more our Prince of the forum ?

In the prime and flush of his youth, when first he stood up before the bar and the bench of Essex county,

Mr. Choate is described as of fascinating beauty. In his maturity he was not so handsome as he was striking in his aspect. It was then the combination of poetry and power expressed in his looks, which was the source of his fascination rather than any grace of feature. The luster lingered in the eye, but his Herculean toils had driven away all bloom from the cheek. Yet still the quick smile of singular beauty illuminated the weary face of the veteran ; he was old, but his smile was young ; and victor in so many fights, with the story of his conquering life stamped on his jaded countenance, he must have been quite as interesting a being in form and feature as when, in the beauty of his youth, he stood up, and Joy and Hope brightened his mantling crest.

THE AUTHOR'S ACQUAINTANCE WITH MR. CHOATE.

Twenty years ago I heard a man say in the street in Boston to his companion, as they walked along, "I'd as soon hear this man Choate speak as Webster." I was only a boy then, but my young imagination about "this man Choate" was instantly aroused. Webster, to my boyish apprehension, was the greatest man in the world ; and for any one to say that anybody could speak as well as he, seemed to me like challenging an Olympian divinity.

Five years after that, a lady introduced me, in Washington, to this rival sovereign of men's homage ; and a little circumstance which followed led to that more intimate acquaintance from which came the conversations and observations which are here recorded.

I was in Yale College, and, impatient of its various restraints, was anxious to start off in the world and leave the halls of Alma Mater at the close of the junior year.

Mr. Choate heard of it, and, with his unfailing and characteristic interest in young men, sat down at once and wrote to the person who had introduced me to him a long letter dissuading me from leaving before graduation, and setting forth the argument for a full collegiate education in such a manner that the thought was instantly abandoned, and the remainder of the college course pursued with far greater diligence. At the close of the studies of college and the Dane Law School, he took me into his office ; and from that time on I saw him almost daily till the close of his life.

How fascinating and endearing he was to youth I need not say ; and for that reason, no less than his magnetic and marvelous eloquence, I observed and studied him every day of my life for ten years. During those years many an afternoon, and far into the night, I have listened to his conversation, not less fascinated than instructed. And to deepen the impression of his thoughts and suggestions, *they were always committed to paper on returning home.*

It seemed to me then, and it does now on reviewing them, that his familiar talk was the best revelation of his genius of all the ways by which the inward man was outwardly expressed. The plane of thought in which his mind habitually moved, even when off duty and in repose ; the energy of its action and the richness of his intellectual resources were there seen, stripped of the glare of rhetoric and the enchantments of distance and parade which might be supposed to magnify his public efforts ; and I soon became satisfied that it might be said of him in every field of thought, as many of his professional eulogists have said of his strictly legal attainments, that he was as solid as he was showy. Strip him of his rhetorical plumage, quench that unearthly flame of those deep eyes

beaming on a jury, calm those torrid heats of passion which swept his audience along in ardent sympathy with his sparkling sentences,—and still, the great thoughts, the historical truths, the wise generalizations, the just judgments on men and things, the intellectual grasp, all were only more clearly manifest in the still clear light of quiet conversation.

Had he not been brilliant, he would have led the bar by mere law-learning and law-logic, and then no one would ever have questioned the tough texture of his brain ; and so he who shall read these pages of his familiar talks—when his mind was not up and on duty—will see, in the themes among which he habitually moved, and the intellectual alacrity with which he grasped at every topic suggested, and poured out instantly new and glowing thoughts about it, the substantial and essential powers of his head. He could talk on any thing, and talk originally and wisely. I think he often talked more wisely even than he spoke.

His more pleasurable intellectual exertions revolved back among the ancient ages, but he was always booked up on all the fresh topics and lines of modern thinking. His table in his library was covered six deep with the newest issues of the press ; and within reach of the sofa upon which he habitually lounged or reclined, were several movable stands packed and piled with books ; which he could draw directly up to him into more intimate contact than the formal rows of innumerable volumes, which lined the walls and rose rank upon rank from floor to ceiling all round the spacious chamber. Surrounded by these mute friends, he loved to be and to talk.

HIS CONVERSATION.

Let whoever would talk with him, he would meet him on his own topic. With me, as he would with any young man of a taste that way, he talked chiefly of lawyers and public men, their eloquence, their advocacy, their character ; great historical subjects, political retrospections and prophecies ; the study of the law, its best method ; oratory, and the best way to cultivate a genuine eloquence ; the great jury trials with which he had been directly or indirectly connected, and many other kindred themes. Take him sick or well, lying down or standing up, the flow of his thought seemed always as clear, exact and ready at one time as at another.

These conversations have seemed to me worth printing for the benefit of other young men. They contain a great deal that is directly practical. They contain the teachings of the greatest of American advocates upon many of the secrets of his singular art. They express his thinking also upon many subjects of absorbing interest to all students of law, of politics, or of intellectual development generally.

It has been said by a high authority, of the first Napoleon, that the talks of St. Helena revealed his fiber and volume of brain as surely as the fights of Austerlitz and Lodi. "Let me talk with a man," said Dr. Johnson, "and I'll find out in fifteen minutes how much of a man he is." No person of intelligence could talk with Rufus Choate at any time on any theme without coming away more impressed with his absolute power, the long range and the steady grasp of his mind, than he had been by all his dazzling outside public performances.

The bar of Essex county, where he first practiced, are eloquent to this day whenever their thoughts turn to Choate's conversation ; and I have known ladies at a dinner party, who expected only dry thoughts from so great a man with a face so wrinkled and so grave, surprised to find themselves enchained by his original and striking talk, presented with a manner of such unpretending but assured power. And in the capital of the Union, at Washington, I have heard celebrated men say that no talk was ever uttered even in that metropolitan center of every sort of intelligence, at all equal to that which was heard when Choate and Webster got their legs opposite each other under some friendly host's mahogany. The sparkle and flash produced by such a battle of brains as that, however, can not be preserved. The most that we can keep memory of is the character of his thoughts, the quality and readiness of his information, and something of the style, whether dashing or demure, in which they were presented. No man can paint battles to the life ; but we can always review the regiments, inspect the arms and ammunition, and infer the deadly range of the rifled ordnance.

Mr. Choate's conversation was grave, rich and stately ; yet always there was a play of humor glimmering through its thoughts delighting and dazzling by turns. You never heard him say much, however grave, without catching something thrown in at once startling and sparkling, or strange and mirthful. I do not think I ever saw him, even in his own house, where of course there was no disposition to do any thing for effect, either in his library or at his table, fatigued or fresh, without hearing him say something in that quiet and sometimes sepulchral tone of his which could hardly fail to set a smile on the grimmest

features. It was not done for effect, but the natural play of a great but truly frolicsome mind. The dry, quaint and fearfully sober manner, too, in which he would utter these things intensified their effect very much. As frequently in court he would throw off a scintillation, which when repeated would seem not very humorous perhaps, but which by his portentously solemn visage and manner would set the jury, the Bench and the audience into convulsions of laughter.

Perhaps, too, the contrast between the generally elevated character of his diction and thoughts, and the comical or humorous, added to the impressiveness both of his gravity and his humor.

His words in talk were the same rare and high-sounding words which he used in his speaking. I do not believe any man in America, if even in the world since Adam, had such a remarkable vocabulary of language as he had. It was the language of learning, of literature, of romance, of art, of newspapers, of slang even, all mixed up together. But chiefly, I think, he delighted in long words—"long-tailed words in osity and ation." I asked him once how he supposed that plain jury before him of farmers and workmen were going to understand that deluge of dictionaries with which for three hours he had overwhelmed them. "Well," said he, laughing, "they know which side I'm on, and they know I spoke *a great while*, and that's enough for them to know about it." He did not accord at all in Mr. Webster's veneration for the Saxon element of our language,—the words short, simple and strong. He rather agreed with Thomas de Quincey, that the Latin element of the tongue is needed, to bear in upon the mind an impression of general power, of beauty, and of sensibility. When he chose, or the exigency de-

manded, he could salt down a thought into the smallest and snuggest sentences,—but he did not generally choose.

But though his thought and talk were all bookish and smelt of the lamp, yet they were as racy with the elements of every-day life as they were flavored with the essence of all good literatures. The truth was, he lived two lives : one alone with his library, the other active in courts ; the one led him in silence through the memorable thoughts and splendid epitaphs of the dead ; the other in noise and confusion through the jealous hearts and squabbling tongues and tedious narratives of the living. By both he educated himself ; and, theoretically, he knew men as well as books. I think he was profoundly acquainted with human nature, under ordinary aspects. He knew the springs of men's actions, and, so to speak, the secret history of their words ; and often in examining a witness, he would, as it were, quietly talk with him familiarly and friendly, and finally dismiss him from the stand fully satisfied with himself, all unconscious that the astute lawyer had divined his inmost secret, had drawn out from him enough to show it, and when the hour for the jury came, would honeycomb and riddle his evidence. Yet he never did this unless the necessity of the case demanded it. He treated all witnesses well. He was too great to bully ; and whatever was the witness's weakness or sin, Choate never harmed him unless compelled to do so. But if it became necessary, if the witness lay athwart his verdict, then he was crushed down and crushed up and marched over.

Besides the conversations alluded to, this volume is designed to exhibit reminiscences of Mr. Choate's forensic and public life for the last fifteen years ; to allude to the great occasions upon which he appeared, their circumstances, and, in some cases, his own personal remarks to

the author upon them ; to mention salient and sparkling passages in his arguments and speeches, interlocutory discussions of evidence, and points in the trial of cases—passages noted down at the time, many of which are not elsewhere preserved or if preserved, are so only in speeches reported hastily, and therefore imperfectly, for the daily press. Many of his speeches, however, have been deliberately reported and revised, and all such will be, it is hoped, carefully preserved in the volumes of his Works published by his family. In some instances, to illustrate a thought descriptive of him, single passages taken from his well-accredited reports will be presented, but his Speeches as speeches, must be looked for elsewhere.

After all, however, that those who knew and loved Mr. Choate can do, he will be forever unknown to those who never saw and heard him. There have been greater men, and speakers more spontaneously charming ; but there never has been, nor will there be, a second Rufus Choate. He can have no parallel, he had no rival, he has no successor. The scepter of his forensic empire sinks with him into his grave. But many men of his own and the younger generation, especially the latter, will long love to dwell upon his genius, to recall his marvelous feats of eloquence, to appreciate the masterly grasp of his vigorous intellect, to remember his fraternal words of encouragement to them, his rich and cordial smile, those antagonisms in which no malice mingled, those victorious verdicts which no insolence of triumph barbed to the defeated, and all those matchless qualities which made his brethren of the bar feel prouder that they belonged to a profession of which he was a member.

At the meeting of his brethren of the Boston bar, before referred to, held when they learned that the dead body of

their great leader was on its way to them from Halifax, every speaker, especially the senior gentlemen who had been his frequent antagonists, alluded particularly to his unfailing urbanity and his unruffled temper. In a profession of forensic fighting, he was always himself *at peace*. And his associates particularly remembered and recounted that he was not only unruffled in action, but in the management of his cause he was always magnanimous and indulgent to his adversary. Whatever formal concessions he could make to that adversary which would save him trouble,—as of procuring extra witnesses, of guarding against surprise, and such things,—this monarch of the bar would accord with a princely liberality. But the miracle about his character was, that with a temperament whose excitableness was daily cultivated on principle to support his eloquence, his self-command was as supreme as his passion was stormy. Though everybody else might be in a passion, and he had made them so, he was to be seen as serene as if he had just risen from the breakfast-table ; though everybody else was galling, ugly and ill-natured, his words were as composing and honeyed as the utterances of a lady's boudoir.

In court or out of court, a romantic interest always seemed to invest him. With his disheveled locks waving about his head ; his gloomy countenance in which grief and glory contended—the signature of sorrows and the consciousness of acknowledged power—the oriental complexion speaking of an Asiatic type of man ; his darkly burning eyes ; his walk swaying along in that singular gait which made his broad square shoulders careen from side to side, like the opposite bulwarks of a ship ; his moody loneliness, for when off duty he was rarely seen other than alone ; his self-absorption of thought producing a sort of

impression as of a mysterious silence around him—he moved about more like a straggler from another civilization than a Yankee lawyer of New England growth and stature.

In his manhood as in his youth, everybody loved this romantic man. It may be said without extravagance that in his own section of the country he was the ornament and dear delight of his generation. Men even who utterly condemned his politics and disliked many things in his career, still spoke kindly and fondly of “Rufus,” as the elders called him—of “Choate” as everybody else loved to call him. Of those that knew him I do not think he had a single enemy; and of those that did not know him, he had very few, except of such as hate mankind. When he died the sunlight faded from the forum; and thenceforth the atmosphere of the courts became the cold, prosaic air of daily business details.

His loss takes from the profession its most stimulating example, its most splendid and charming illustration. For a season certainly, if not for ever in our practical age—his death eclipses the gayety of the Courts, and the luster of the judgment-seat vanishes away.

CHAPTER II.

OUTLINE OF HIS LIFE, AND PERSONAL REMINISCENCES.

RUFUS CHOATE was born in Ipswich, Mass., on the 1st October, in the year 1799, and died in July, 1859, in the sixtieth year, therefore, of his age. He is known to the world outside of his profession of the law, chiefly by his speeches in the United States Senate, and his Addresses to the people on political and literary subjects from the caucus and lyceum Platforms. But though his speeches in Congress charmed and conquered the universal ear, and his platform harangues led the feelings of great audiences as moons lead tides, yet his true fame must rest on his professional career as a legal advocate. To be—The great advocate, he gave the thinking and the enthusiasm of his life ; in that career he had garnered up his heart, and on that he rested his reputation. Whatever else he did was incidental and comparatively accidental. Had he not been sought out and urged to other fields of public service, it is not probable he would ever have wandered outside of the courts ; and when he did do so, he came back again soon and joyfully, as if he had returned home.

I do not propose to write a full memoir of him ; but the prominent dates of his career, and a descriptive outline of him as a lawyer and a man, may appropriately introduce these reminiscences.

He grew up in Essex county, in Massachusetts, with but ordinary opportunities of schooling. When he was sixteen

years old he entered Dartmouth College, but a brilliant boyhood had already made him sufficiently known to excite in many quarters of old Essex great expectation of his future achievements. His college course increased these expectations. In Hanover, they said there never was any such boy in college as young Rufus Choate. In studies he was immeasurably and easily the head of his class ; and one of his tutors has since said that long before he left college he was qualified to be a professor in any university in America. He indulged very moderately in sports or play. When the boys were kicking foot-ball, he would stand or sit gazing or soliloquizing under the big tree. He preferred lonely walks and his beloved books. Often, he has since told me, he used to sit with his books reading and ruminating till long after midnight and far into the morning. But, nevertheless, he was not pedantic or conceited toward his companions ; on the contrary, they all loved him dearly. Nobody envied him ; almost everybody idolized him.

Of course, he graduated with the first honors. His delivery of the valedictory address is still remembered by many as very beautiful, touching and eloquent. His appearance on the stage, so singular for a youth—that face, even then, pensive and poetical with the pale cast of thought, the shadow of the midnight lamp even then staining the cheek ; the mournful and pathetic tones of his naturally soft voice ; and the original, elaborate and attractive ideas he presented, all conspired to weave the spell upon his hearers, and, with all his comrades, to crown him in memory for ever as the hero of their hearts.

After graduating, he taught school, but soon adopted the law as his profession, and fell upon the study of it with the most eager application, as if with prophetic instinct of the destined identification of his renown with it. He en-

tered the Dane Law School for a few months. By this time, very many eyes had begun to turn to him with a fond interest ; and he now left his Essex home to prosecute his studies in Washington, in the office of the Attorney General of the United States, William Wirt, towards whom, in conjunction with William Pinkney, the attention of the professional mind of the country was then concentrating as the two foremost figures on the American forum. He remained in his office a year, but, as he told me, he did not see much of Wirt himself ; for the Attorney General was prostrated a good deal of the time by a difficulty in his head, arising from the exhaustion of his official labor. He, however, had the good fortune to hear the last great argument of Pinkney and one of the first great arguments of Webster. He saw Pinkney fall back fainting in the midst of that argument, and watched him as he was carried out to return to a court room no more, but to die, as he had prayed he might die, the unquestioned leader of the American Bar. The intimate sight of these giants of the forum stimulated his aspirations and invigorated his energies. Pinkney, especially, excited his rapturous admiration. Often, since then, he has referred, in conversation with me, to his splendid stream of words and arguments, the rapid torrent of his overwhelming enthusiasm, the grasp of his mind, and the glorious arrogance with which he carried all before him. Webster, on the contrary, he said, seemed, as he followed Pinkney, infinitely tame, jejune and dry. Probably from this hour dated his critical study of Pinkney's arguments and speeches. For these, he knew thoroughly. He traced their gradual improvement from the first essays to the last crowning efforts of his life ; and he was always warm, in pointing out how successively they grew richer and stronger in diction, in form of phrase, and in scope and

sweep of thought. "If you want to see," he used to say, "what an immeasurable difference there may be between different productions of the same mind,—read Pinkney's earliest and his latest arguments."

From these southern fields of professional observation, he came back to enter the office of Judge Cummins, of Salem; and in September, 1823, he was admitted to the bar of the Common Pleas of that county, and opened his office in the town of Danvers, near by. In two or three years he removed to Salem, the shire town of the county, and in November, 1825, he was admitted to the bar of the Supreme Judicial Court.

He did not undergo any probation of patient waiting for clients, for his success was almost instantaneous. As his boyhood had been brilliant, his manhood was meteoric. He took hold of celebrity as if it were his right, at once. And very speedily he filled such a place in the public eye that he even began to be followed round from court to court by people interested to hear him. He now applied himself so absolutely to law that he utterly neglected literature. I have heard him say that his mind became entirely arid and desolate, so exclusively did he study dry law. But, nevertheless, all agree that no New England court of justice had ever before seen such charming fervor thrown into its dull discussions, or heard the ancient decisions of Saxon law set forth with the grace of such Grecian rhetoric. And all now agree, also, that his mastery of naked law and the athletic action of his understanding are the qualities which any one must admit, who endeavors to account for the success of his apparent audacity in grappling at once with the most formidable and experienced leaders of the local bar.

From the very first, however, in the management of his cases he went for victory. Ambitious of reputation, he still

looked with a single eye to getting the verdict. And he would sacrifice his rhetoric and his preparation at any time to make any headway towards that goal. Within a few years he has said that at first in his practice, although he knew the law of a case, yet he would be careless about presenting it in a manner to gain the admiration of the judge, provided he could thereby gain the approbation of the jury. And even if he knew his law was so bad that his verdict when gained would probably not stand, still he always struck for that verdict nevertheless. Napoleon, he said, used to conquer first, and negotiate afterwards ; and on somewhat the same principle, I think, he would win his case first, and fight through the law with the judges in the best way he could after the jury were dismissed.

But it was all done from high springs of ambition. The sense of power and the love of glory, not at all the glitter of gold, moved his clear spirit. He never seemed to me to have any sense of the meaning or value of money. Until very late in life, when he took his son-in-law into partnership with him, he never collected or even knew what was due to him, except under a spasmodic impulse of necessity.

In 1825 he was elected a representative to the Massachusetts Legislature, and in 1827 he was a member of the State Senate. In 1832 he was chosen to represent the Essex district in Congress, but declined a reëlection. In these occasional forays into politics he distinguished himself by set speeches, florid, erudite, and fervid. Such were his exhaustless literary resources that he touched nothing which he did not adorn. He had neither time nor inclination for the political drudgery, and, therefore, did little of the detail business of politics in the committee rooms or on the

floor. To the drudgery of law only, would he consent to buckle down his fiery and impatient genius.

HIS EARLY PROFESSIONAL LIFE.

Several of Mr. Choate's early friends, classmates, townsmen, or acquaintances have put on record their recollections of the way he struck their world during these first years. No outline of his life would be at all satisfactory which did not give at least some idea of a dawning so resplendent. I have therefore collected from all the accounts the following sketch of his college career and his Essex county life :

"Mr. Choate was so far a wonderful man that full justice is not yet done to his amazing attributes of mind. From boyhood he was a marvel and a prodigy. When at the academy, the reputation of his brilliant scholarship preceded him to college. The writer of this sketch has often heard his father, who was a classmate of Mr. Choate in college, speak of his already wonderful scholarship, that placed him head and shoulders above all his companions, though the accurate and learned George P. Marsh, of Vermont, late American minister to Constantinople, was one of them. No one thought of disputing his supremacy, for he was *facile princeps*. His passion for the acquisition of knowledge was unconquerable. He came to the recitation room haggard and worn, with throbbing temples and exhausted frame ; but everybody knew he had outwatched the Bear, and was pursuing the beauties of Greek and Latin literature far beyond the then narrow curriculum of college studies. The classmates recall with delight the elegant felicity of his translations, that made the heavy task a dream of poetry. When, as the valedictorian of

his class, he bade them farewell with mournful pathos, many an eye in the old church was wet with sympathy for him whose youthful promise seemed likely to be quenched at its early dawning. Yet he lived to be for more than a generation the favorite and cherished son of his Alma Mater. And he loved her with an unfailing affection. Beneath the venerable walls of Dartmouth he married the wife of his youth. Thither he loved to return; there more than once, in the old church where he had won his earliest triumph, he electrified cultivated and delighted audiences with the long-drawn strains of his matchless eloquence."

The foregoing is from an account written by a gentleman in Wisconsin. The following is by a gentleman of Salem, and was written in 1858:

"Mr. Choate was admitted an attorney of the Court of Common Pleas, in this county, at the September term, 1823, having completed his professional studies in the office of the late Judge Cummins, then of Salem, and one of the leaders of the Essex bar. At the November term of the Supreme Judicial Court in this county, in 1825, he was admitted an attorney of that court. At that period, the bar of this county was adorned and illustrated by able and learned lawyers—by men of large experience and high character, who have filled with honor and distinction high official positions in the county and State. It is doing no injustice to any of those eminent men and lawyers to say, that Mr. Choate, upon his first introduction to the practice, placed himself at once in the very front rank of the profession. All felt and acknowledged, that if not a Daniel had come to judgment, one very much like him had come. He was retained at once in important causes, and was immediately one of the leaders of the Essex bar. He monopo-

lized the practice on the criminal side of the courts, first in the Court of Common Pleas, and afterwards in the Supreme Court, on his admission to full practice at the bar. At that period the criminal jurisdiction was in both courts, the higher offenses being cognizable only in the Supreme Court. Mr. Choate used to be regarded as the Attorney General for all the criminals arraigned in those courts.

“The first appearance of Mr. Choate in any professional capacity in Salem that I can now recollect, and that must have been within a few months after his admission to the bar, was in the defense of some young men of respectable families in his own town, Danvers, who were arraigned before the late Ezekiel Savage, Esq., the principal police magistrate of Salem at that time, on the charge of some riotous proceedings at a colored dance-house, in a small colony of blacks, then settled and for years before and afterwards at the head of the Salem and Boston turnpike. The case excited much interest, from the character and position of some of the parties implicated, and especially from the fame, even then, the expectations and hopes of the young advocate. All had heard of Mr. Choate. He had before that time, I believe, appeared once or twice before some of the magistrates of Danvers, and for a retainer of three or five dollars poured out, in the fullest measure, all the affluence of his varied knowledge, all his high and bold logic, his words of fire—always telling, always pointed, and always bearing in some way on his case, and literally astonished the natives and all other men who heard him. His fame at once spread abroad. There is and was a close intercourse, business and otherwise, between Salem and South Danvers, where Mr. Choate first commenced his practice, and then resided. They, the men of Danvers, had never heard such eloquence before; it

came upon them with all the force of a new revelation. It was wholly a new sort of thunder and lightning, and they were literally filled with amazement! Under these circumstances, it is not strange that when the 'Mumford case,' as it was called, came up in Salem—a somewhat larger and broader theater—a more diversified audience—ship masters, old salts, supercargoes, clerks, merchants, and the various men of the various callings of the chief town of the county—an interest and a feeling altogether unusual should have been excited on the occasion. It was so. The place where Justice Savage held his court was a large room on the second floor of a substantial building, on one of our principal streets, and it was immediately densely packed with all the varieties of our population to some extent, but the audience at first was mostly composed of those persons who usually congregate in such places. The trial commenced and proceeded; witness after witness was called, and all subjected to the severest and most rigid cross-examination by the young counsel. Now and then a passage at arms with the counsel for the government (a gentleman of very considerable experience in criminal courts, and of some fifteen or twenty years' standing at the bar), would come up, to give variety to the scene; and now and then a gentle, most gracious and reverential rencontre with the honorable court would intervene (Mr. Choate was always most respectful and deferential to the courts), and again a hard contest with some perverse and obstinate witness would relieve the tedium of the protracted examination. Some of the immediate auditors would get over-heated, and then work themselves out into the fresh air, and report the proceeding, the sayings and doings of the young lawyer—what he said to his antagonist, Esquire T., or to the honorable court, or this or that fugitive comment on the witness, or

case—as the trial proceeded (an inveterate habit of Mr. Choate, in all his early practice, and no court or counsel were or could be quick enough to prevent it—it would breathe out, this or that comment, or word, or suggestion).

“In this way, and by such means, the fame of this case extended, while the trial was in progress, some two or three days, as I now recollect, in the office of a police justice! Men of the various classes would assemble around the court room, in the entry, on the stairs, outside, to hear the fresh reports; and so things continued till the argument came, and then there was a rush for every available point and spot, within or without the compass of the speaker’s voice, and the people literally hung with delighted and absorbed attention on his lips. It was a new revelation again to this audience. They had heard able and eloquent men before in courts of justice and elsewhere. Essex had had, for years and generations, an able, learned and eloquent bar—there had been many giants abroad in the midst of us—some of national fame and standing, but no such giant as this had appeared before—such words, such epithets, such involutions, such close and powerful logic all the while, such grace and dignity, such profusion and waste even of every thing beautiful and lovely! No, not waste, he never wasted a word. How he dignified that court, how he elevated its high functions, with what deference did he presume to say a word, under the protection, and, as he hoped, with the approving sanction of that high tribunal of justice, in behalf of his unfortunate (infelicitous, from the circumstances in which they were placed) clients, etc., etc. I could give no word or sentence of this speech. I did not even hear it, but I heard much of it, and all accounts agreed in representing it as an extraordinary and

wholly matchless performance. They had never heard the like before, or any thing even approaching it, for manner, matter and substance. It was a new school of rhetoric, oratory and logic, and of all manner of diverse forces, working however steadily and irresistibly in one direction to accomplish the speaker's purpose or object.

"The feeling excited by this first speech of Mr. Choate in Salem was one of great admiration and delight. All felt lifted up by his themes, and there is one thing remarkable about Mr. Choate always. He elevates his hearer to his subject. His subject is always above or higher than his audience. Now of this particular case. It was a common row of some common and some rather uncommon rowdies at a negro dance-house. That was the subject of a three hours' speech, to which a common man, as well as a man of the highest culture, would have listened, not only without weariness, but with delight. A great audience, of all classes and conditions, did listen to it with delight and admiration, and all agreed with one voice that they never had heard the like before. This single effort established Mr. Choate's reputation in Salem from that day to this. And all were prepared to welcome him, when, a few years afterwards, he took up his abode here, after the elevation of his old friend and teacher, Judge Cummins, to the bench of the Court of Common Pleas.

"Mr. Choate at once went into a full practice. I should think within two years from the date of his admission to the bar, he was retained in more causes in the Common Pleas than any other attorney of that court. He had all the criminal defenses, and if he did not clear all the rogues, none were convicted, under his surgery. While he remained in the county, no jury ever brought in a verdict of guilty against any client defended by him ! And I remem-

ber hearing Mr. Choate say, not long before he left our bar, that no person defended by him here had *then* been convicted. In the case particularly referred to, some of the parties were held for trial in the Court of Common Pleas, where he again defended them, and they were acquitted. There was one famous case in the Court of Common Pleas, of an indictment of one of his then townsmen for stealing a flock of turkeys ! We had this case, at every term of the court, for a year or more, and the inquiry used to be, ‘ When are the turkeys coming on ? ’ The proofs accumulated on the part of the government at each successive trial. The county attorney, a man of experience and ability, fortified himself on every point, and piled proof upon proof at each successive trial, but all without success. The voice of the charmer was too powerful for his proofs, and at each trial—three or four in all, I forget which—there was *one* dissenting juror ! The case at last became famous in the county, and in the vacations of the court the inquiry was often heard, ‘ When is the turkey-case coming on again ? ’ and people would come from different parts of the county on purpose to hear that trial. Here the theater was still larger. It was the county, the native county, of the already distinguished advocate. I heard those trials. One was in old Ipswich—in December, I think—a leisure season—within four miles of the spot where the orator was born. They came up from Essex—old Chebacco—the old and the young men of the town. Representatives, more or less, from the whole body of the county were present, and the court house was crowded with delighted and astonished listeners. I remember how they all hung upon him, spell-bound by his eloquence ; and I verily believe these by-standers would have acquitted by a majority vote ; but the jury, bound by their oaths to return a true verdict ac-

according to the evidence, would not do so, but still there was one dissenting juror ; and finally the prosecuting officer, in utter despair, after the third or fourth trial, entered a *nolle prosequi*, and thus the turkeys were turned or driven out of court.

“I have heard that this alleged turkey-thief, years afterwards, called on Mr. Choate at his office in Boston. Mr. Choate did not recollect him, which greatly surprised the old client, and he said, ‘Why, Mr. Choate, I am the man you plead so for in the turkey-case, when they couldn’t find any thing agin me.’ There had been only forty-four good and true men *against* him, if there were four trials, and I believe there were, without including twenty-three more of the grand jury !

“After Mr. Choate’s admission to full practice in the Supreme Judicial Court, I recollect one term of the court he procured the actual acquittal of nearly the whole dock—of all, certainly, whom he defended. That was the week before Thanksgiving, and, it was said, they were all going home to spend Thanksgiving, instead of to the jails and penitentiaries. The old and venerable Attorney General said, pleasantly, at one of these trials, (it was in the old *Salem* court house,) he believed the days of ‘the Salem witchcraft had returned again.’ He called him ‘the conjuror.’ I repeat what I believe to be the literal fact, that no man defended by Mr. Choate in the Court of Common Pleas, or in the Supreme Judicial Court, while he practiced in this county, was ever convicted by a verdict of the jury ! And he was the criminal Attorney General from the first to the last of his being here.

“Mr. Choate, while practicing the law in his native county, had a truly noble name and fame, and it was all justly deserved. No man was ever truer to his clients

than he was. He always exerted himself to the utmost in every case, and that has been one secret of his great success. It made no difference with him what was the cause—what the tribunal, the party, or the fee, he went into it with his whole strength, and summoned to his aid all his vast resources of logic, wit, utterance, learning, and knowledge of men, (in which no man excels him,) and contended for his very life for mastery and success.

“I have heard him in the State courts, in the United States Supreme Court, arguing a question of boundary between States, or discussing the constitutionality of a law of Massachusetts; I have heard him, also, in the Legislature of Massachusetts, in the convention of the State, in the lyceum, on the stump, and in the Senate of the United States, and must say that I heard him sometimes, while he was practicing law in Danvers, in the early years of his professional life, in an argument before a country justice of the peace for his tribunal, and a small neighborhood of farmers and mechanics for his audience, with a poor man for his client, wholly unable to pay a fee, in *presenti* or in *futuro*, when, to my mind and recollection, he fully equaled any of his later efforts on larger topics or of wider fame. The fact is, Mr. Choate was a full-grown lawyer, jurist, advocate, and, more than all, MAN at the start. He had sounded the very depths of the law in his early studies; he always read with pen in hand, and noted and inwardly digested every thing. He read every thing, understood every thing, and remembered every thing. His mind was filled with all knowledge. His aims and ambition were wholly professional, and with such a training, such capacities, and such knowledge of the law and of all other subjects, his advent to the bar was, indeed, the inauguration of a new school; but it is a school that will die with him!

He may have imitators, but he will never have an equal or a successor *in his sphere*. With all his remarkable exuberance and richness of diction, he never uttered a word to the ear, in his spoken addresses, which had not a meaning and power on the topic in hand. He makes all manner and forms of speech his servitors to do his bidding, and to work to his ends, whatever they may be.

“Mr. Choate was always a great favorite with the members of the bar here, especially the younger members. He was welcomed with a manly and just pride by his seniors and the old leaders of the bar. In his general manner and bearing, he was always respectful and deferential to his seniors in years, and especially so to the courts—to all courts—to the layman justice of the peace in the country, as well as to the Supreme Court in full session. I need not say that he was always an established favorite with the people at large, and while he resided among us, they always delighted in showing him marks of their confidence and regard. He was early elected to the Legislature from Danvers, afterwards to the Senate from the county, and, a few years later, to Congress from the old Essex south district.

“He was then just about thirty years old. We all rejoiced in his honors, he bore them so meekly and unobtrusively. He never sought office ; office always sought him. When nominated for Congress, it was with the greatest difficulty that he could be prevailed upon to accept the nomination. He had no taste for public and political life. All his heart, all his aims in life were in his profession ; and he yielded to what seemed to be, at the particular juncture, a *necessity*. I need not say that when we finally parted with him, to enter upon the broader and larger field of the metropolis, and to earn for himself, in various public stations and employments since, a national reputation

and fame, as the unequalled orator and advocate of the Massachusetts bar, we, the bar and the people of Essex, did it with extreme regret. Very pleasant was he to all while amongst us, and we all rejoice in his successes and honors, and will pardon much to a high sentiment of 'nationality.' He argued questions of law in the Supreme Judicial Court, as soon as he was permitted to do so by the then rules and practice in that court, and that was at the November term, 1827. I think one of his first cases was Jones vs. Andover, reported in the sixth Pickering, which raised a question of construction as to the meaning and import of the term 'highway,' as used in the statute, giving individuals, injured by any defects therein, a remedy against the town bound to maintain such highway. In this particular case, Mr. Choate appeared for the defendant town, and at the trial a non-suit, by consent, was entered, on the ground that the way in question was a *town* way. And that was the question for the whole court, whether the word 'highways,' as used in the statute, included 'town' ways; if not, the plaintiff in the suit had no remedy. The court decided that it did, against Mr. Choate; and I rather think he will tell you, this day, that that decision was another form of legislation. From the manner in which he argued the question, I have no doubt he believes he was right to this day, and perhaps many of the profession would agree with him. The enlarged construction would make a better and more reasonable law, undoubtedly; but I have heard other gentlemen beside Mr. Choate pronounce that decision mere *legislation*. Another case, argued by him at the same or a subsequent term, relative to a reservation in a deed and a right of way, (Choate vs. Burnham,) opened wider topics and larger scope; and I well recollect with what marked attention he

was listened to by the court and bar. The court then consisted of Parker, C. J., and Justices Putnam, Wilde and Morton. They evidently looked upon him as a sort of *new creation*."

Another Salem friend says: "From the first Mr. Choate was industrious and studious, rising early in the morning, and busied with his books at his office long before the day laborers went to their work. He was accustomed to take long walks, frequently in the pastures, and without a companion. In these lonely rambles his full and melodious voice was sometimes heard by other strollers in those solitudes, themselves unseen, who were thus unexpectedly made auditors of the young forensic speaker. Doubtless, the partridges and squirrels of this lonely region (the sheep pasture rocks) have often been startled by the tones of that voice which was wasting 'its sweetness on the desert air,' and which was thus preparing to sway listening senates, and charm the ears of his countrymen.

"Mr. Choate was a regular, though not a constant, attendant at church. At first, and until about the time of his marriage, he attended at the Unitarian church, then under the pastoral care of Rev. Mr. Sewall. He afterward went to the Congregational church under the pastorate of Rev. Mr. Walker, and subsequently Rev. Mr. Cowles. The same restlessness of manner, or nervousness, which was so marked in Mr. Choate, was even greater in his youth than in his later years. Everywhere, at home, abroad in the court room, or at the church, but mostly when in deep thought, he was accustomed to run his slender white fingers through his long jetty hair, and toss about in wild confusion his curly locks, which, however, always fell into comely order when his hand was withdrawn.

"His love of books is well known, and was as strong in

his younger days as at a later period, although his collection was not then large. Like many other young professional men, his means did not allow him to purchase largely, as he was already in debt for his education and his small but well-selected law library. More recently he has been a large purchaser of choice authors ; and at auction sales of foreign books he has been accustomed to give orders for the purchase of such as he found on the catalogues. On an occasion he gave particular orders to his bookseller to buy certain books which he had marked on the catalogue of foreign books. Some were limited to five, ten, fifteen, or twenty dollars, as the case might be ; but there was one book that he *must* have. ‘Buy that book at any price,’ said he with emphasis. The result was that he obtained the coveted volume for the magnificent sum of twelve cents !

“We might have spoken of many traits of his character as yet untouched. Of his early friendship, his fascinating converse, his quaint remarks, his gift at repartee, his keen sense of the ludicrous, his polished irony, his geniality and imperturbable good humor, and his kindness of heart. All these, and many others, are remembered and cherished, and their fragrance remains although he has departed.”

The statement that he ever attended the Unitarian church has been contradicted, and I do not think it can be true.

A Boston writer adds a few more particulars and names worthy of remembrance in this connection. He says : “It is well known that though in popular estimation the name of Mr. Choate is coupled with the annals of the bar of Suffolk, he was an exotic here. It is not, however, so well known that though he came to this bar at a comparatively early age, he left behind him, in his Essex record, a career

not surpassed by any thing which he achieved in after years in a more conspicuous forum. We have heard it remarked by one of his contemporaries there that by far the most brilliant portion of Mr. Choate's forensic life was before he came to Boston, and that his magnificent performances here were in a measure the dregs of his vast energies. This may have been exaggeration as expressed, but it is quite likely to be true in the main. Mr. Choate began practice in the town of Danvers in about the year 1825, and shortly after removed to Salem, and continued there till he came to Boston in 1834. His practice was confined to no part of the county ; he attended the courts in the three court towns, and was unquestionably the leading court lawyer in general miscellaneous trials. Here was nine years of constant court practice. The reports of the Supreme Court show him to have been in by far the greatest part of all the best litigations in the county, from the first cause in which his name appears in that court (*Reuben Jones vs. the Inhabitants of Andover*, 6 Pick. 59) to the time he left the county. We have been told he took all kinds of business, and was especially in repute as a criminal lawyer, and did not hesitate to try even liquor cases, and causes before justices of the peace. We have seen a gentleman who witnessed the first cause he ever tried, a defense, we think, before a justice of the peace in Danvers, and he represented his effort as full of the same fiery eloquence which marked his maturer efforts. He was probably compelled from necessity to take all general business which came to him ; for he was without property, and it is said when he left Salem he was probably worse than nothing in a money point of view. His clients, too, were of a hard-fisted kind, who expected and demanded a brave fight on ever so small an occasion, and ever

so desperate a cause. It was from this circumstance he must have acquired that discipline in the *hard school of business* which fixed for life his brilliancy in a setting of plain matter-of-fact industry. He must also have had competitors well fitted to inspire ambition and nerve him to his best exertion. There must have been Saltonstall, Cushing, Lunt, Pickering, Cummins, Shillaber, Ward, and Lord ; all men in whom he must have found foemen worthy of his steel, not to mention the occasional competition with great leaders from other portions of the State. We are told that he was quite as minute and elaborate in his preparation of arguments then as afterwards, and his efforts invariably attracted a crowded court house. One of the present justices of the Supreme Court was appointed, in company with two others, referees in a cause to be heard at Danvers, in about the year 1826. He proceeded the day before the time appointed to that town, and on alighting at the inn was met at the door by one he took for the innkeeper, by whom he was shown into the parlor. This man was dressed in very democratic attire, with cheap pantaloons, a long slouchy vest, a blue coat with metallic buttons (and quite too small for him), and a black cravat, much resembling a string, thrown around rather than tied on his neck. The next morning the referees met for the hearing, and the same young man arose and opened the case. The judge has said, that though he has since on many great occasions heard Mr. Choate, he never heard him surpass that opening. This must have been the first year of his practice. The young advocate afterwards informed the judge that he had *sat up all night* preparing his argument."

Such are the proud voices of his early contemporaries.

During these years, therefore, it appears he was estab-

lishing his position as the first advocate of the Essex bar. In the year 1834 he removed to Boston, as a sphere of endeavor and aspiration to which he now felt fully equal.

HIS BOSTON CAREER.

Here, in the New England metropolis, new scenes of professional encounter, new antagonists, and in some degree new law, rose before him. He was still young, but little over thirty. Yet he entered at once into the lists with the very ablest leaders of the Suffolk bar, and advanced for seven years through a steady progress of successes and of fame. At first this strange-looking and singular-acting youth was regarded by many of the old leaders who had long been masters of the situation, as rather odd than powerful; and I have been told it was the fashion among his new associates at the bar rather to sneer at his uncouth gestures, his outbreaks of voice, and his general originalities of proceeding in court,—especially his habit of arguing every case however trivial, with all his might, exalting the most insignificant subject of suit into even majestic importance,—moved their mirth and disparagement. But when it was found that victory waited on the young champion, that verdicts after verdicts were won by him, and that his points of law were again and again sustained by the Supreme Court in banc, the opinion of the profession gradually underwent a complete change; until by the time he was chosen by the Massachusetts Legislature to the United States Senate in 1841, he was not thought by his professional brethren inferior to any pleader at the New England bar; while by the general public he had for some time been considered superior as an advocate to any man except Dan-

iel Webster. He took Mr. Webster's chair in the Senate, when that gentleman took a place in General Harrison's cabinet.

In the Senate he made those speeches which have most drawn upon him the attention of the nation. Most of them were carefully revised by himself and officially published. The speech on the Oregon question in reply to Mr. Buchanan, our present President; those on the Tariff; the Annexation of Texas; To provide further remedial justice in the Courts of the United States, were printed in pamphlet form for popular circulation. They were carefully prepared, as I very well know, and ought to be read by every one who would attempt to appreciate the mind of this great man. They are as wise in thought as they are poetical in expression.

In 1857, under Mr. Choate's immediate direction, the author of these reminiscences made some progress in preparing a single volume of his selected speeches, and I remember what special value and importance he seemed to attach to his speeches on the Tariff question, and Protection to American labor. If he desired any to be preserved, it was those.

In the Senate he was regarded as the especial friend and expounder of the views of the Secretary of State, Mr. Webster. This led to an unfortunate encounter between him and Mr. Clay, who was enraged at Mr. Webster's remaining in office under President Tyler. It was not at all surprising that Mr. Choate, still young, with comparatively little experience in the halls of legislation, should have been surprised into silence by the terrific onset of Henry Clay, chief of the Senate for twenty years. But what was indeed surprising was, the kind and appreciative manner in which he always spoke of Mr. Clay, as well afterwards as before this rencontre. Again and again I have heard him cordially

acknowledge Clay's prodigious power of character and his magnificent oratory. He said the ultimate elements of Clay's greatness were wisdom to plan and genius to pacificate. In 1850, when Clay retracted his Farewells to the Senate, and stood once more in the Chamber, he remarked to me, that he rejoiced that Clay was there, for Clay could bring about a peaceful compromise, and Webster, he feared, could not. And in allusion to Clay's principles, he said, "They rise like the peaks of a mountain range from the table land of an illustrious life." Subsequently, in a letter from England to me, Mr. Choate said, "They have no Henry Clay here in this House of Commons." There were no bitter hatreds choking up Choate's great heart. He showed that his silence before Clay in the Senate was not due to want of invective ability to answer him, by his very successful passage at arms with Senator McDuffie, the old antagonist of Randolph of Roanoke. This happened after he had become a little more accustomed to his senatorial Chair, and the appalling strangeness of the elevated scene had somewhat passed away. Choate hated no man. He either loved, admired, or was indifferent to men.

His style of Senatorial address was the same passionate and pictorial stream of speech as his jury appeals. He enchained the ear, he reasoned cogently, he fascinated the intellect. I have heard the southern and western men especially, speak with a poetic enthusiasm of that dark-faced Senator from Massachusetts with curling locks and such a delightful flow of words. "He took us," they would say, "and carried us right along with him, as if we were on a beautiful stream, with flowers and songs."

In 1845, he returned to the practice of the profession of which he was so fond, and in which he was working when death found him still busy.

It was about this time that I formed that personal acquaintance with him which continued uninterrupted for fourteen or fifteen years, to the day of his death, and which was as intimate a relation of friendship as could naturally exist between youth and one so great, and so much older.

From the time of his return from the Senate to the Bar I do not think anybody questioned his empire over the jury, and few who were intelligently informed doubted his commanding influence with the judges. The events of his life, from this date, are chiefly chronicled in the names of the great cases which he argued—cases where life, or honor, or vast sums of property, or all combined, were staked upon the issue.

Among all these, the Albert J. Tirrell case was the most famous criminal defense he ever managed. The defendant was charged with the murder of the woman who was alleged to be his mistress. The proof, to the unprofessional mind, was clear and damning, but it did not quite come up to the certainty which the law demands. The marvel, however, was to make the jury see it in that light—to make them take the professional view, and not the popular view. Among other lines of defense upon which the advocate rested was the singular one of “*somnambulism*.” It will be shown in these Reminiscences hereafter that this much satirized plea was not conceived by Mr. Choate himself, but was put into his mouth; and that the poetical and effective presentation of it alone was the rôle which his genius played. The defendant was acquitted.

Mr. Choate thought that the ample brief of his argument in this case could be found among his papers, and that it ought to form a part of any collection of his Speeches. He said to me in 1857: “If I can get hold of

it we will puzzle it out together. I can dig it up, I know." He did not live to do this. Some one, it is said, once told Tirrell, after his acquittal, that he *existed only by the sufferance of Choate*.

Mr. Choate's talents proved much better when for the defense on the criminal side of the court than when enlisted against the accused. For when, in 1852, he was appointed the Attorney General of the State, his prosecutions were not generally successful. Juries disagreed, trials were repeated, defendants were acquitted; presenting, in this regard, a marked contrast to the administration of that office by Governor Clifford, his successor.

On the civil side of the court, the litigation of the most important rights and questions of property which could arise in a city so commercial and wealthy as the metropolis of New England was carried on by him in one long, steady, and extraordinary current of success. Not a great many years ago a leading lawyer at the Suffolk bar retired from the active practice of the court room, and among other reasons for that retirement he gave this: "What's the use of my going on term after term fighting cases for corporations, with Choate to close on me for the plaintiff. If I have fifty cases, I sha'n't gain one of them."

On many occasions the judges of the Supreme Judicial Court have expressed their appreciation of Mr. Choate's profound mastery of the principles of common law, and his exact command of all the rulings of the local law. In 1850, Professor Greenleaf, the author of the well-known work on "Evidence," told the writer that in a civil or a criminal case, taking law and fact into view as they were to be presented in presence of a jury, he considered Choate, to use his exact words, "*more terrible than Webster*." At

the bar meeting, when he died, one of his oldest and toughest antagonists, whom I have often seen pitted against him, declared that though he had known Jeremiah Mason, Sam. Dexter, Daniel Webster, and many other warrior-lawyers, yet he thought, as a court combatant, Mr. Choate was more formidable than any man he had ever known.

As an illustration of the estimates set upon his power in the law, independent of his advocacy, it is well known that he was more than once offered a judgeship on the bench of the Supreme Court of Massachusetts. It is not so well known, but it is true, that he was once, if not twice, made aware that he could have the Attorney Generalship of the United States if he desired it. These honors of the ermine he declined. I know also that when Judge Curtis resigned his seat on the bench of the United States Supreme Court, Mr. Choate himself had the opinion that he might receive the appointment if he would allow some friends who desired it to intimate his willingness to accept it. I urged him myself to allow certain representations to be made for him, reminding him that that post would give him a change of toils, and some respite from them. But he peremptorily refused, and declared that nothing would tempt him to put that ermine on. Said he, "Washington is very attractive ; but not Washington shut up in the lobby and on the bench of the Supreme Court." Unlike Curran, who retired upon the judicial bench of Master of the Rolls ; unlike Erskine, whose career of twenty years came to a dead stop on the woolsack of the Chancellor of England, Mr. Choate was resolved to die in the arena, and with the professional harness on his back.

Only a few years ago, he remarked to me, "I am reading over again Coke upon Littleton. He is an enthusiast

in the old law, and I want him to inspire my enthusiasm ; for it would be *dreadful*, you know, to lose one's interest in the profession to which a man is going to devote the last ten years of his life." The last ten years of his life ! Prophetic words. He seemed to feel then that another decade must end his intellectual struggle ; and alas ! within a little more than seven years—three years short of the prophecy—those lips received the sacred seal of death.

During those last years, I often urged him to take a little rest, to go to some rural spot, to recreate his jaded faculties ; but the advice was all ineffectual. He could no more rest than the Wandering Jew. Summer and winter, in season and out of season, were to him all alike times for labors to be done and new glories to be won. One torrid summer's day, I suggested to him to run down to the soft Mediterranean airs of Newport, and not to take his books, but throw himself upon the social tides and chances of the pleasure-seeking place. "Why," said he, "if I did, I should hang myself upon the first tree before night."

Pinkney, he would often remark, had great seasons of recreative repose and entire change from his tremendous labors at the bar. He went as negotiator to London ; he was our envoy to Italy, and an ambassador to Russia. These were great breathing spaces to him, and thus he got re-made every now and then. This example, however, never seemed to impress Mr. Choate himself as a lesson to him, until quite recently, when he one day observed to me, that now he should like to go in some diplomatic capacity to a continental point of European interest, where he might be in the neighborhood of some of the great libraries of the old world, and, as he expressed it, "have a regular frolic." And he thought it not impossible that ultimately such might be his fortune. I think if at the open-

ing of the present national administration, of which he was so self-sacrificing a supporter, he had been offered a diplomatic post abroad, whether lofty or low, he would at once have accepted it. Then, journeying through European scenery, with a change of occupation—for occupation was indispensable to him—he would have revived and renewed his worn energies, ere the arrow had entered his soul too deeply for all the medicines of earth. That recreative temptation was not held out to him, and he went to his office in Court street daily, till a very short time before he died.

In his later years of practice, he took up a branch of the law of which many make a specialty, and adopted it as one only of the professional provinces through which he ranged as a master. That was the Patent law. He was very fond of this department of legal science, and it would have been happy for the world as for him, if he had devoted himself to it with some exclusiveness, and abandoned minor and miscellaneous cases. Its issues involve so much money that it would have fully remunerated him, and a few great patent cases a year would have demanded the occasional straining of his powers to high levels, and a constant attention sufficient to preserve him from ennui and brooding.

In 1855, he received an injury from a sprain and a fall while arguing a case in Dedham. As a result of it, one of his legs became inflamed, an abscess formed, and after a long time of confinement a surgical operation was performed upon his limb. That sickness, I think, was the first deadly blow to the full and glorious exertion of his powers. He told me that when he took the ether which was given him, it was very pleasant till the moment came of utterly surrendering consciousness ; then death itself

could not have been more awful to him, and he struggled in himself as for life. From that sickness and shock, he came out again to his round of daily cares ; but he came out haunted and overawed by the shadow of his past deeds of splendor, and with little more to hope for save to keep his career from sinking under the comparison.

Some time before this event, upon the great stage of Faneuil Hall, he spoke, on one occasion, with such tremendous physical movement and energy, that he thought he suffered an internal injury, and ever after that he was quite careful to regulate his more frantic gesticulations. But it was from the time of this Dedham sickness, I think, that the star of his genius slowly waned. He did not lose so much in pure intellectual power, but in energy and magnetism. The alacrity, too, with which he would take hold of every topic suggested to him, and the celerity with which his mind would run all round it, and away from it, and come back to it, seemed to abate. Before that sickness, he was the most remarkable man I ever knew, for being able to carry on any number of lines of thinking and talking at the same time. No matter how far you branched off, on episodical or parenthetical topics, he would pursue the diverging track to the close, skip back from it to the main line with sure precision, and return upon and close that chief topic with certain accuracy. But in late years he would say, "Let us finish one thing at a time ; we are now upon this point. When we finish this, we will go to that."

His oratory, too, underwent a marked revolution. He no longer tore a passion to tatters. He no longer seemed to try to whirl along the jury or the audience in a maelstrom of passionate feeling ; but he spoke more calmly, and even more logically, than before. In his platform speaking, I do not think he tried after this to

produce any purely oratoric effect. His lectures before the Boston Mercantile Library, and other bodies, were written to refresh his mind with excursions into a varied literary domain; for he said to me, "In their preparation, I am led all about my library, and I consult and renew my acquaintance with hundreds of my books."

His recent political Speeches were written rather carefully, and, contrary to his general habit, were written to be read rather than heard. For, both them and his later lectures, he delivered in a comparatively low voice—the strange music of tone, as of a chant, which all who heard him must remember floating through their cadences; but many parts of them were spoken with rather the tone of poetic soliloquy than of direct and pointed exhortation. Indeed, often he became quite inaudible, as many of those who hung upon his accents would murmuringly testify.

In his last tribute to Webster, "the guide, philosopher and friend," as he styled him, at the Celebration supper at the Revere House, the change in his speaking was very manifest. However, on that occasion he produced a very marked effect, by uttering his emphatic sentences slowly and entirely separated from each other by a pause. "O for one more peal of that clarion voice!" then a sublime pause; "one more throb of American feeling!" and so on, through the entire peroration of his speech. On that occasion he was for the last time on earth eloquent, as *he* would measure eloquence. Into those final dropping sentences, he distilled the very essence of his most eloquent feeling.

When Fisher Ames pronounced the eulogy on Alexander Hamilton he said, "These tears which we shed will never dry up. My heart grows liquid as I speak, and I could pour it out like water." Mr. Choate often alluded to the mournful beauty of these words. But Fisher Ames

did not love Alexander Hamilton any more than Choate loved Webster ; and as now he rose up like Ames to speak over the grave of his great friend,—and stood there gaunt, sunken, suffering, with glittering eyes,—and ejaculated those farewell words with concentrated energy, as if the genius of his life had all rallied upon them,—the solemn-toned syllables sounded not like a speech, but a grand burial anthem.

When he left the Senate of the Union, in 1845, his public official life may be said to have closed.

Addresses in public during the last fifteen years of his life were what most caught the popular eye and ear, yet, after all, during the whole time, with very rare exceptions, his heart and head were really in his law. He never thought much or talked much about his platform efforts. They cost him a good deal of labor, but so far as regarded their success with the public he seemed to forget them as soon as they were uttered. Nobody had any encouragement to compliment him, or to tell him what people said about any of his exhibitions. He had absolutely no vanity. He spoke on literary themes for the delight of the thoughts, and the rapture of the enthusiasm which their utterance evoked in his own soul and mind. Whether the audience was large or small, whether they liked it or did not like it, whether the stage behind him was covered with dignitaries or nobodies, seemed quite indifferent to him. The next morning after any speech, however brilliant or exhausting, you would always find him in his office early, hard at work, and having taken a walk and a snuff of literature, too, before he came down there. Such was the case during the last fifteen years of his career. Whether he was more alive to the public in early years before that time, I do not know. It is hardly to be presumed, however, that he was ; for the appetite for

admiration grows by what it feeds on, not lessens. Erskine and Pinkney both grew vainer and vainer, till they died. But there was no other man in the world who thought and felt so moderately about Rufus Choate as Rufus Choate himself.

The lecturing system, in its present enormous development, he had a low opinion of. An occasional Address he thought well enough. A college or academic Address he thought honorable to the orator, and a happy thing to do. But lecturing, as a main object of a man's mind and energies, he thought very meanly of. "It leads to nothing and comes to nothing," he would say. Casting the bread of exhortation upon the waters in the hope of its returning after many days was not his fashion of action. He wanted some tangible object always before him—an election by the people, a vote by a representative body, a verdict from the jury.

From 1845 the strictly professional current of his life was only varied by his hurried visit to Europe, his addresses and his services in the Constitutional Convention of Massachusetts in 1853. That flying European visit was in 1850, and some interesting observations of his upon it, will be found further on in this volume, coupled with extracts from letters of his written to me from various points of interest abroad—London, Paris, Switzerland and various other places.

His course in the Constitutional Convention was memorable. He was in a hostile body, but he won every one's regard; and although antagonistic to the feelings of the majority, his oratory swayed with all its legitimate influence. The Convention was one of much strength of intellect and celebrity. It was the only representative body in which Charles Sumner and he ever sat together. All his

speeches here were carefully considered. But his great Speech in the convention, and the great Speech of the session, was upon the integrity of the Judiciary, and against elective judges in the commonwealth. He was very unwell at the time, and the summer day was of most oppressive temperature. The orator looked wretchedly, but he rose in his bench and delivered his speech to the delegates with growing power and steady march to the last syllable. As he uttered the last word, he sank down, pressed his hand to his head, rose again and staggered up toward the door on the outside of the semicircle of seats. His strength and life were so utterly exhausted by his speech that he could not reach it unaided. He was helped out, placed in a carriage and borne home.

It is recorded that Cicero often fainted after speaking ; and great actors on the stage, it is said, have frequently lain upon the boards unable to rise when the curtain had fallen on their intense tragic impersonations ; but I never knew any other orator beside Mr. Choate who would so utterly exhaust and tear himself all to pieces in his speaking. In Washington, an eminent lawyer told me he found him once in bed in the morning, apparently deadly sick. An hour or two after he went into the United States Supreme Court,—and there was Choate. It was a great case, and he was arguing and haranguing the gowned Judges with all the strength of his lungs, his nerves braced to spasmodic action, and his eyes blazing as with supernatural fires.

In this speech in the Constitutional Convention Choate was successful ; for although the feeling in favor of enlarging the jurisdiction of the people was very strong, that barrier of independent Courts was preserved even in the constitution framed then and there. During all the sessions of this Convention, however, he carried on more or

less law, and with the exception of this convention he could not be said to have turned from the Law at all.

In recent notices of his death the remark has been made that he sometimes *turned aside* from legal labors to prepare academic and other orations. He never turned aside in the least to prepare them. Not a single case at law was refused or slighted for them. He had exactly the same court programme that he would have had if he were not preparing them. When he was to make such an effort, he put off preparation till the last minute, and then worked very early in the morning, and during little lulls in the stormy progress of his cases, to complete them. These labors were superimposed upon, not substituted for his professional day's work. Occasionally he would make a slight attempt to "cut out of a case" which was marked for trial on the day before he was to deliver some address to which public expectation looked with interest. But this attempt was rarely effectual; for the Court would never grant any indulgence for such a cause, law having a prevailing jealousy of letters; and his junior, who had retained him in the cause, of course regarding it as disposing of the case by suicide, to go on with the trial without Choate.

I recollect that on the occasion of a lecture, not very long ago, when an important cause in which he was retained was reached in the Supreme Court on the very day before the evening on which he was to speak, quite a number of Mr. Choate's friends at the bar interested themselves to get him out of the case, and give him at least one day and a night to complete his preparation for the lecture, and to rest. He was very anxious for it himself, but he seemed wholly powerless to promote it. He never could bear to disappoint a brother lawyer, nor indeed to say "no" to

anybody. The effort for his brief emancipation failed both with the Court and his own junior ; but the next night, there he was on the platform, sick with sleeplessness and care ; but speaking with ardent passion to an immense audience, among whom several of the very judges of the Supreme Court appeared gratified listeners. In the course of that address, he told me afterwards, he felt his little strength leaving him, and the hall and tiers of people growing dim ; and he grew so faint that he meditated turning round and sitting down. " But," said he, " I concluded I would go on till I dropped down." His excitement bore him up and carried him through.

Probably the most brilliant lecture he ever delivered was one very early in his career, on " The Sea." He himself always regarded that lecture with enthusiasm. He told me that it was stolen out of his pocket in New York, but that it was so fixed in his mind that he could have recalled it and written it all out at any time within a year or two after its loss. The sea itself always had to him a mighty and mysterious impressiveness.

Of all his political addresses, the ones in which he seemed to throw his heart most warmly and his imagination most brilliantly, were those of the campaign which closed with the election of General Taylor to the presidency ; and those of the campaign of the compromises which closed with the defeat of Daniel Webster for the nomination to that office. These were in 1848, and in 1850 to 1852. Taylor and Webster were charmed words to him, notwithstanding the latter thought the nomination of the former was one " not fit to be made." In the career of the frontier captain, Zachary Taylor ; his intrepid march of victory from Monterey to Buena Vista ; his answer to Santa Anna when summoned to surrender, the imagination

of Mr. Choate found a field of the most passionate and picturesque address.

Who that heard him will ever forget his allusions to Diogenes with his lantern, and his description of the search of the Whigs for an honest man ; and how on a distant battle field, in a stranger land, they lifted the canvas of a tattered tent, through whose torn peak the stars were glimmering, and there, in the old war-stained hero before them, they found the object of their search and hopes ! And how the old cradle of Faneuil Hall rocked and rang again and again as he described the modest conqueror of Buena Vista ! And what a gleam of boyish delight rushed over his features as, remembering he was speaking in Boston, which calls itself "Athens," he shouted out, "Why, he's got a library, and reads it like Julius Cæsar in his tent ! and he writes a better letter to-day than Arthur Duke of Wellington."

His speeches in Faneuil Hall in defense of Daniel Webster's compromise of 1850, and recommending him as New England's candidate for the Presidency, are to be ranked among the very warmest and best of his political essays. In them he dealt with the majestic idea of American nationality, its original compromises, and its essential fragility and delicacy. But chiefly his tone was inspired by the remembrance that he was speaking for the god of his intellectual idolatry.

His love of Webster was at once womanly and Homeric. It was as if Achilles had loved Agamemnon. It was as Curran did love Grattan. When the use of Faneuil Hall had been refused to Webster by the Boston aldermen, but afterwards the refusal was revoked, he broke forth in exulting eloquence, as, standing on its ample stage, he described its gates as open now—"Aye, and on golden hinges turning."

It was either in this speech or the one of the next March, 1852, that he closed a highly-wrought peroration by a singularly homely and practical illustration which exemplified the startling anti-climax which was always one of his oratoric weapons. When, in summing up the thoughts which for an hour he had hurled upon the crowded audience surging in the vast hall before him, he reached what appeared to be the acme of powerful eulogium upon Webster, he suddenly stopped, threw himself forward in the attitude in which a sailor would heave on rope on the ship's deck. "Now, boys!" he exclaimed, "don't you think he'd be a good pilot?" There was a loud response from the crowd. "Then all together now, and heave him on to the quarter deck;" and amid tumultuous cheering the orator sat down. This little finale was apparently not premeditated, as the speech was; for next day it was not in all, if it was in any, of the reports of the meeting.

At the famous Baltimore Convention of 1852, which nominated General Scott—the conqueror of the halls of the Montezumas—as President of the American States, passing over the great civilian Webster, Choate made one of the most fervid and striking speeches of his life. The Convention was composed of delegates from all the States; men elected, in great measure, for power and political position;—ex-governors, counselors, leaders of the people, chiefs of parties were all there; and it was, in point of intellect, a very superior body to the national House of Representatives. They, therefore, could appreciate Choate's intellectual splendors fully. And the southern branch of the Convention, especially, were completely carried away by this new and strange eloquence.

I have heard, and it was currently said at the time, that in the tedious struggle for a nominee, so much were the

southern men impressed by Choate's speaking and appearance, they crowded round him, and more than once intimated that they would vote for him, as nominee, certainly for Vice President, if not for President. But there was no bribe beneath the stars that could swerve Choate from his allegiance to Webster. Next to his God, he believed in Daniel Webster.

The public address to which he devoted the most study of his life, the longest time, and the most elaborate polish, was his eulogy on Mr. Webster delivered at Dartmouth College. Mr. Everett and Mr. Choate were successively invited to deliver the eulogy before the city authorities of Boston, but each declined. About the same time, or a little before, Mr. Choate accepted the invitation of the college at Hanover to deliver a eulogy there. He remembered that Dartmouth was his own college as well as that of the illustrious dead ; and, as he said to me, he should have a year to look over and think over the great theme. "And, besides," said he, "up there before the college I can take a more scholarly and academic and wide-ranging course of illustration than would be quite pertinent here, before our city dignitaries." It was the only address I ever knew him to begin upon before-hand. He was invited in October, 1852, and he delivered it in August, 1853. Meantime I believe he worked upon the eulogy, creating its thoughts and painting its scenery every moment which he could snatch from his office and the courts. It was the pastime and the toil of nearly a whole year to him.

The delivery of the oration he did not consider to have been as successful as the scene of its utterance and the labor of its preparation would have rendered probable. When he rose to speak, he was, as usual, worn down by anxious labors. He spoke late in the afternoon, to an audience not

fresh, and with the shadows of evening darkening round him. But the oration itself was carefully revised by him, and it is, as a whole, the best specimen of his academic style which he ever pronounced or preserved.

In it you can see his famous long sentences, the clauses accumulated and elaborated and rolled on, heaping up and resounding like the long volume of an Atlantic billow breaking upon the shore. Long as his sentences are on the page, in his mouth as delivered they seemed short and intelligible. He spoke them very quickly, but without headlong haste ; each clause had its full emphasis, and the subordination of each member to the whole paragraph was constantly preserved. These long sentences in all his speeches, are full of thought, weighty with occasional aphorisms, flashing with sudden wit, and decorated with flaming and florid hues. As the gay bird of Paradise, showing new beauty in every feather of her painted pinions, flashes on her way with a wing strong from the ligaments which the glittering colors hide, so this rich rhetoric is inextricably interlaced and interwoven with the substantial thoughts which underlie and support it. The ornaments do but wing the ideas to the goal with accelerated momentum. "The plumage that adorns the royal bird supports its flight."

This funeral Oration, also, appreciates what was often overlooked in Mr. Webster's unpractical statesmanship and services, so hard and strong and matter-of-fact—that was, not the mere usefulness, but the essential splendor of his career.

In this oration, too, the oratorical wealth of the English language is advantageously seen. The words of our language are used in every variety for impressiveness, sometimes for poetical impression, sometimes for simple strength, sometimes for mere explanatory description. The Latin and

the Saxon elements of the tongue are both freely employed. Next to the Greek language, I think Mr. Choate valued the English tongue as a medium of oratory. The Greek he thought superior to any and all Gothic tongues. Highly as he ranked Webster's great Hayne speech, he was accustomed to say the Crown speech of Demosthenes was unapproachable by any orator speaking in any Gothic language. "No Gothic tongue," I heard him say, "has the *words* to make a 'Crown speech' out of." And if any orator ever knew *words*, both as weapons of thought and as words merely, it was himself. How he studied language, its etymology, its synonyms, and its very essence, we shall see hereafter.

In many respects this eulogy upon Webster may be considered the Crown speech of Rufus Choate's life.

Certainly no American before or after Webster has ever laid down in his grave with the voice of a panegyric, so sustained, so solemn, so splendid, resounding amid the drums and trumpets of his obsequies.

In 1847, and for two or three years during the period of my recollections of him, Mr. Choate was a regent of the Smithsonian Institute, and largely contributed to shape it for success. He felt much interest in it, and would take time from most valuable and remunerative labors to attend to it. He was also a member of the Massachusetts Historical Society, and a member of the New England Historic and Genealogical Society.

There was no grand scheme for popular enlightenment or benefit, of a literary, scientific or practical character, to which he would not make time to lend a helping thought, and, if possible, a helping hand.

When the project was first started of introducing camels into the South-west Territories to perform the long journeys

of the vast and barren spaces there, he gave himself to advance the idea as if it were a private speculation of his own. Morning after morning he literally tore himself away from legal studies and legal claims to think about and advise in this most useful application of the eastern beast of the Desert to the western wildernesses. He never, however, received any credit for it from anybody ; nor, as usually happened with his disinterested labors of love, was he at all publicly known in the matter ; though the experiment succeeded, as there are now many camels in the country.

One senatorial term in the Senate of the Union was all the time given him on which to play any high national part, with the eyes of the country upon him. That was not long enough for the national mind or the national heart to settle towards him, as undoubtedly it would have done could he have been well known throughout the land. If ever a man was fitted by culture and by disposition to be the darling of the people, it was Rufus Choate. He loved to be alone in his library, but all his intellectual sympathies were with the great, passionate, eloquence-loving people. The people, the Democracy are eloquent. An Aristocracy or the courts of an empire are stiff and silent. Tacitus, Mr. Choate used to say to me, was the Macaulay of antiquity. But Tacitus, he added, was unhappy, for his only sunshine was the smile of the emperor ; but in his breast were all the swelling sentiments of Roman history and grandeur, guarded and silent.

Mr. Choate's knowledge of the people was far more practical than has been thought. He knew their routine of life, their various thinkings, their tastes, their jealousies, their ambitions ; and he sympathized with them far more than he did with the artificial etiquette and conventional

clownishness of classes who think themselves above the people. Golden parlors and the glittering life of wealth he had no fancy for. He said that he thought what was called "society" in this country was frivolous and unprofitable ; its thoughts feeble, its talk trivial, and its personages usually people of no real account. In his youth he had driven the cows to pasture ; he had kept Thanksgiving with the boys and girls of old Essex ; he had gone to "the muster," he had gone to the plain country church ; and no son of New England felt more deeply than he the imprint upon his nature of genuine New England country institutions. A haughty and foreign tone he was as incapable of taking into his mind, as he was of receiving a "foreign air" upon his good old Essex county manners.

Hence came all the allusions and images which dot and sometimes even dignify his oratory, taken from plain New England life. The school, the home, and the table with the Bible on it, the meeting-house, the desk, the continental battle field, and even the capricious weather of our ice-bound, Puritanic Massachusetts. Had events, therefore, taken him upon the high places of national observation, he would undoubtedly have won the heart of America. In other States, as in his own State, people who disagreed with him would have pardoned him, and multitudes who could not comprehend him would have been fond of and admired him.

I think he had a feeling in his own mind that the national Senate was, after all, the fit theater to close his life. All the really great men of the Senate, he would remark in conversation, are or have been able lawyers. Law prepares a man for statesmanship. The United States Senate is the most dignified and attractive body in America, if not in all the world. Edmund Burke might have spoken there

with far more effect than in the British House of Commons. The Hayne speech of Mr. Webster was possible in the American Senate ; it would not have been possible in the British Parliament. The society of Washington concentrates the most celebrated men in all North America. Remarks like these, which he more than once made to me, would lead to the belief that, had politics pointed differently among his constituents, it would have been very grateful to him to round and crown his life of toils, so terrible, by a series of intellectual services rendered to his country, while standing on summits of political eminence so splendid that her eye and ear must inevitably have been attracted and fixed upon his whole past and present professional career. Then the power and beauty of his accomplished utterance would have been felt all over the land ; and then he would not have died, as some would style him, a " Massachusetts great man," but an American great man.

Now, however, whatever may be published about him will never give him the place in universal memory to which his unlimited wealth of learning, his comprehensive and varied powers, the wide scope and sheer strength of his understanding entitled him. He claimed no position for himself, and the world does not know him well enough to take him and place him in his appropriate niche. Vaguely and beautifully the dim traditions of the wise thoughts, couched in exquisite language, which fascinated multitudes, will float about men's stories and recollections ; but when Youth turns to the book, and the volumes of his Speeches are opened, the song of the strange man will be hushed,—and the music of no other orator can recall it to us again.

Inasmuch as events denied him this political plane of final effort, it was very unlucky for Mr. Choate that no

series of law cases of national interest presented themselves, for his advocacy, during his service at the Bar. Erskine had in his court room a vast stage erected, upon which the eyes of all England were fixed, when he defended her free Press, and baffled her Prime Minister's prosecutions. And the jury eloquence of Curran, when he stood up for his countrymen, persecuted by the spies and informers of Tory administrations, reverberated through Ireland, and all over the world. In our own country, William Wirt, Pinkney, and Sargeant S. Prentiss, had each of them opportunities of professional achievement of great national interest. Wirt's description of that Catiline of the Union, Aaron Burr; and the fairy island in the Ohio, on which Blennerhassett had reared "the shrubbery that Shenstone might have envied," long lived in the recollections of his own generation, and are now repeated in every school-room by the rising generation of Young-America. Pinkney passed the prime of his career in the national capital, with the thoughts of America turned to him for more than ten years as the most brilliant orator she could show to the world; and Sargeant S. Prentiss enjoyed at least one chance of national attention. For when he maintained in Congress his legal right to a seat, as the representative of a sovereign State under her broad seal, he was listened to by a national audience stretching beyond the white peaks of the Alleghanies, and beyond the blue waters of the Mississippi. But at no portion of Mr. Choate's professional course did the horizon of his professional duties open in the direction of such scenes of noble interest. His course was the routine of an eminent New England lawyer; but unlike those champions of the Courts, to whom he was in no sense intellectually inferior, it was never interrupted by any passage of grand occasions sufficiently elevated to

give to his professional life even one scene of high, sustained, and epic interest.

Students will hereafter read his arguments in the law reports, and scholars will read his rhetoric in the volumes of his speeches ; but unless some wizard rises to call him back, by his words, to our fond imaginations, none shall bid those dry bones live again. None but a magician like himself, "a conjuror," as his first rivals called him, shall teach those who have not heard him in the moments of his supreme passion, to know and understand this meteoric man. He was an Athenian Greek kept back for New England ; and, nurtured at her bosom, he learned to love his mother land. But his mind seemed ever yearning for the ancient clime of historic splendor ; the oaken chaplet ; the pomp of the processions ; the games, the rhapsodists, the strange eloquence that shook the world to Artaxerxes' throne.

The desire was often expressed that he might snatch from life the leisure for a book on some inspiring theme, in which his genius might be in some fuller manner daguerreotyped than it could possibly be in speeches upon temporary topics and of hasty production. And at one time the literary world were startled by the positive announcement that he was actually engaged upon a history of that brilliant democracy of Greece with whose arena he was so fondly familiar. But although I believe that at one time he contemplated something of the sort, yet it was soon abandoned ; for, as he said to me, "I might seize the time, but I can't get *my mind into the frame to compose*. When I come home, even if I have an hour or two to spare, my mind is torn to pieces by the jar of the day, and I cannot do more than get in the mood for composition when I find my time is up." Although great orators do not

usually make good writers, as Charles James Fox exemplified in his fragment of English history, yet such was Mr. Choate's critical and life-long classic culture, that it would be generally agreed by those who knew him best, that had he gone abroad and devoted a year or two to the production of a brief, brilliant, and truly *Choatean* volume on a congenial theme, it would have been to him a monument more lasting than brass ; and it would certainly be far better than the best memorial which any others can now build for him.

In one point his life was a noble example to youth. Although apparently of a temperament burning up with all the passion of the East, yet never, amid all his successes, his flatteries or his temptations, did he abandon himself for a moment to any dissipations. Studious, well-governed, intellectual to the last, he neither allowed himself to wander about idly, like Erskine, babbling with a silly vanity of his past glories ; nor, like too many of the dazzling men of England and America, did he grow luxurious with success, and lose himself in the vortex of any vices. When men of ardent genius have gained the goals which shone afar upon their youth, the excitements of hope die away, and too often they seek, in wine or gambling or other stimulants, the delightful delirium of passionate joys. But no man ever saw Mr. Choate press the Circean cup too freely to his lips ; and no friend mourned to behold him put life and honor in the dice-boxes of chance.

It was often hinted that he was secretly an opium-eater ; and that thus he baffled scrutiny, and rose in secret into the hellish heaven of sensual voluptuousness. I know that this was not so ; and for three reasons : first, he told me himself that he had never taken an opium narcotic except once, in the form of laudanum, for a troublesome

tooth, and then it almost drove him distracted. This is confirmed by the Rev. Dr. Adams, his clergyman, who denied it solemnly standing over his coffin. He based his confidence upon the physician who had been Mr. Choate's medical attendant for twenty years, who said that, so far from Mr. Choate's system being affected by opium, he could put him to sleep with a Dover's powder. Second ; in all the time in which I was in his office and saw him hourly, and afterwards when seeing him freely and constantly in his library or in his chamber, sick or well, sitting up or lying down, I never observed the slightest trace or indication of the use or presence of this drug ; and third, and most decisive, the effect of opium as described by men of science, and as exemplified in the splendid but scattering intellect of De Quincey, is to unloose the grasp of the logical faculty, to brighten the mind preternaturally, but to render its operations less consecutive and close to the point. Now, Mr. Choate's logical processes were finer and firmer as he grew older, to the very last. His reasoning powers grew even stronger with his years. If he lost anywhere, it was in the flash and fervor of his intellectual action ; but to the very last, his logical powers played with remorseless accuracy and steadiness.

This last reason for exonerating him from all this charge of opium indulgence is unanswerable. Probably, what gave the charge the little currency it ever had, was the corrugated, bloodless, startling look of his haggard physiognomy. But the strange worn look was the result of the stormy working of his brain vexed by incessant toils, not the result of unholy passion in its agony of delight. Speaking to me of a renowned statesman across the water, he said, "He drinks brandy so badly, that it's an even chance at any moment, whether he's drunk or sober. He

has no excuse whatever for it. The excitement of his legal profession is over, to be sure, but he is unpardonable, for he is a learned man ; he knows every thing ; he has all literature, all knowledges to fall back upon."

Upon "literature and all knowledges," Mr. Choate himself fell back more and more in his later years ; and the consolations it gave him should admonish young genius everywhere, especially in our excitable land, to cultivate it as an ultimate refuge and solace.

For this example of self-restraint, then ; this career which eschewed and scorned dissipation ; this sustained and dignified industry ; this conquest of the sensual and exaltation of the intellectual elements of happiness, the life of Mr. Choate is, indeed, admirable. He never wandered round among men—the relic of himself—a man of pleasure and success, the walking epitaph of his heroic days ; but he kept his armor on and his drill up to the mark of battle, and died in the very midst of professional war.

"The old Whig party is dead," said Daniel Webster, gasping, on his death-bed. Mr. Choate was a Whig of two generations. In 1856, when the Republican party nominated Colonel John C. Fremont as President, many Whigs joined them. Still more rallied around the neutral flag of Fillmore. But Choate came out flat-footed and fair-faced for Buchanan, the nominee of the party against which, for more than thirty years, he had volleyed incessant thunder. It is not the province of these Reminiscences to defend or to assail him for this act. I have only to say that as one opposed to those politics which he then took up, I know that his *motives* in the action were pure, high and noble.

He talked with me upon this subject long and earnestly. The sacredness of conversation, whose character would naturally stamp it as private, although no seal of secrecy

enjoined its inviolability, forbids its publication. But I may say that all the line of argument and observation he suggested to me upon it, was patriotic, disinterested and statesmanlike. I had the misfortune then to experience the only great difference of feeling from him I ever knew during all the years in which he honored me with his paternal kindness. But from all he said to me, no one for an instant could have doubted the purity of his heart or the uprightness of his mind in taking this political attitude. When the strifes of present parties are over, history will do him justice on this point.

It shows the moral power of a great civilian out of office in America, that this man's all but silent example exercised so much influence on this national question. Two powers defeated John C. Fremont: moral power and money power. The latter was not necessarily corruptly exercised, but invisibly, by a thousand channels, *Capital* baffled his partisans; the former was the immense prestige of a few men of signal intellectual position, formerly Whigs, who threw their moral weight into the hostile side of the great balances. Of all these, I think Rufus Choate's name and fame stood foremost. It was as effective as it was illustrious; and that effect shows his real power.

Singular in his death as in his life, he went away to breathe his last breath comparatively alone with his thoughts and his soliloquies. There was in this a poetic consistency with his life. For although for ever in the midst of his clients or his household, he always seemed lonely and solitary. My impression is that when he went away he never expected to come back, but that he anticipated dying in a more distant and genial clime than the one where his death-bed proved to be.

Sixty years was the span of his life, but when we think not how long, but *how much* he lived, it was not a short life. Every hour of his existence was full of thoughts and pictures, and an inner life of vast variety and beauty. Except when he was in the tumult of a trial at the Bar, the outer world was not his world. Deep and far in the recesses of his brain he was ever revolving the scenery of the world's great days, and the thoughts and faces of memorable men. Start him upon a conversation, at any time, about any personage of splendor in history and you would find he knew him and talked of him, as promptly and enthusiastically, as if he were still flesh and blood. Among the illustrious men of antiquity, he had many friends ; and he seemed to feel as jealous for their honor and as prompt to resent unjust criticisms upon them, as if he had met them, that very day, at dinner. If you looked at him, in one point of view, you would say he was New England born, and New England bred ; if you looked at him in another and more general aspect, you would pronounce him Grecian to the back bone. Perhaps the true formula for his description would be to say, that he was a sort of cross between the Greek and the Yankee civilizations.

To any student of mankind it must have been a great satisfaction to have seen him ; for there is nobody exactly like him on the earth, and it may be said without exaggeration, that his singular and paradoxical genius, character and person have given a new type of man to our modern civilization.

CHAPTER III.

PERSONAL REMINISCENCES.

MR. CHOATE, at the time I was a student in his office, was rather a tall and full-sized man, and looked worn but sturdy and muscular. He was strongly built; with big bones, broad shoulders, large feet and bony hands, and of a tough fiber in his general physique. More than this, he had the nervous bilious temperament, the temperament for hard work as well as brilliant work. His chest was wide and powerful. And his floating hair, which is in some degree a test of a strong constitution, resisted all the inflammation of his busy brain, and remained to the last firmly set. It was always black and hardly tinged at all with those gray hues which have been aptly called the white flag of truce which old age hangs out to the hatreds of life. He was a very strong man, capable of vast fatigue and endurance. From his frequent sick headaches and the look of his fatigued face, many supposed him physically a feeble man. He was very far from feeble. It was not feebleness, but immense over-work which continually wore him down.

He had no recreation for his brain but change of labors. He walked daily with great vigor out of the town or round Boston Common; but his mind was at work all the time. Those who met him in the gray of the morning would see his lips moving, and his features working, as though even then he were ejaculating and recalling thoughts. Some-

times he carried a book of poetry with him, to cheer and *floralize* his mind for the day of dry law before him.

I think he preferred to imagine nature, rather than to observe her. He would rather, if he were walking in sylvan scenery, read about other arcadian groves than to look around him critically. He had no fancy for game or sport of any kind. Horses he knew nothing of practically, and was as indifferent to a blood-mare of Arab stock as if she had been a cart horse from Washington street or an omnibus horse from Broadway. I recollect showing him some good horses, in the stable, upon an occasion of his dining with me out of town; and pointing out to him many stable improvements recently introduced. He stared vacantly round upon the stalls and harnesses without the least curiosity or interest, and got back into the house as soon as he could. In driving him home in a little wagon, the horse broke into a fast trot; Mr. Choate instantly put out his hand, and said with most deliberate emphasis, "I want you to drive me as slowly and as carefully as if I were a Methodist minister going to meeting."

Books were his pastime, and books only. In them he literally lived, moved and had his being. His library was his home. His authors were the loves of his life. Men, he was kind to, but I do not think he trusted men much. But his books he believed in, with all his soul. He told me that it was a great pastime to him, simply to pull them down and put them up, and rearrange and fuss over them. He cherished rare editions. He bought books, till every inch of space on the walls of his long library was filled, and he said he must put the rest under his bed. He had in his library some eight thousand volumes. Many volumes of engravings and plates also, he accumulated; for his love of the beautiful was not so much a blood love, as

it was an intellectual love. He said, pictures, heads and scenes enlivened and cultivated one's fancy. These books were bought not to be looked at but to be read. He grasped the thoughts of a book like lightning ; and he was for ever reading. He read while walking. He read while at his meals. He was at one time so lame as to be unable to walk to and from Court, but he had his carriage seat half covered with books, which he consumed as he rode. How he loved his library and his books, and what consolation he found there and in them, may best be gathered from the following extract from his beautiful address at the opening of the Peabody Institute at Danvers, Massachusetts. "Let the case of a busy lawyer testify to the priceless value of the love of reading. He comes home, his temples throbbing, his nerves shattered from a trial of a week ; surprised and alarmed by the charge of the judge, and pale with anxiety about the verdict of the next morning ; not at all satisfied with what he has done himself, though he does not see how he could have improved it ; recalling with dread and self disparagement, if not with envy, the brilliant effort of his antagonist, and tormenting himself with the vain wish that he could have replied to it—and altogether a very miserable subject, and in as unfavorable a condition to accept comfort from wife and children as poor Christian in the first three pages of *Pilgrim's Progress*. With a superhuman effort he opens his book, and in the twinkling of an eye he is looking into the full 'orb of Homeric and Miltonic song,' or Pope or Horace laughs him into good humor," etc. He told me that in his youth he had frequently read inspiring sentences of ambition and splendor in literature which made him burn all over, or, as he quaintly expressed it, "they made me have goose-flesh all down my back."

He read every thing, not only new issues, but the Old Masters of discourse and thinking. Bacon, Burke, the Bible, Milton, Pope ; and of the ancients, Plato and Demosthenes, Tacitus and Cicero. These he knew and never dropped them. Their thoughts and phrases sparkled for ever on his tongue. He told me he learned some poetry every day of his life. In the conversations which are detailed in this book, it may be seen clearly who his *acquaintances* and *friends* in literature were, and how intimately he knew them.

Cicero, especially, was his idolatry as a man, an orator and a writer. He said Demosthenes was the greater orator, but he never spoke of Demosthenes with that tone of affection he would express toward Cicero. Hereafter in this book will be found a fond defense of Cicero dictated to me by him. He said, nothing made him fret more than the modern German attacks on Cicero as a pusillanimous trimmer. He said he wanted to set Cicero *right* before the world ; “however,” he added, “there is only one man in the world whom I would care very much to set right about him—*that is Macaulay.*” I never saw him so moved about any attack upon himself as he was by the New York Tribune’s disparagement of Cicero, in criticising his own lecture on Revolutionary Orators. For Tully, he had indeed a loyal and a lyric enthusiasm.

He took the Valedictory Address at his College, and starting in life with a very fair classical education, he sustained and added to it during all his career. Mr. Webster once expressed to a friend, in my hearing, his amazement at the scholarship of a man so busy in life. “Why,” said he, “Choate reads his classics every day,” and so he did—Greek and Latin both. During the last few years of his life, he even perfected his knowledge of German. “All the

new and daring thought and speculation," said he to me, "is in the German mind." Therefore he studied it.

Although he had no fancy for mechanical employments, and had literally no Yankee knack with his hands, yet he liked to read about mechanical movements and physical objects. He cared nothing for soldiership, but he liked to read about armies and strategy. Indeed, there was very little in the world that he did not like to see, there was still less in the world that he did not care to read about. A prominent Counselor of the New England Bar, of lettered accomplishment, once said, "Choate is omniscient. I thought I must know more about one subject than he did—the naval battles of the last war with England; but no: he convinced me of my errors, and demonstrated them by showing me what the evolutions of the ships must have been."

I met him once walking, and after the first salute was over, said he, "I was just recalling that fine sweeping sentence with which Southey closes his life of Admiral Nelson, 'That joy, that consolation, that triumph was his.' It is," he added, "fine, and a beautiful climax." It was a summer's afternoon, a sky gleaming with golden and snowy clouds, blue waters laughing in the sunlight, but Choate did not notice sky, cloud, or water; his thoughts were on the printed pages of his beloved books.

It is thus apparent, from this whole view of him, how deprived of recreation his mental faculties were. And so it can be inferred what the strength of a constitution must have been, which could keep in play and tolerant of such toil, for sixty long years. Recently two of the most intimate of his rivals at the Bar, remarked to me, without knowing that the other had said it, that Choate's vigor of muscle and nerve, and whole physique, was prodigious. He

told me himself, that he could work on in Court, day after day for weeks, if he could only have his evenings free for rest.

And so he did work—work for forty years, and died at last of an acute disease, not even then worn out. I have in my possession a very interesting manuscript book of his, written in 1830, about five years after he was admitted to the Bar, which illustrates the diversified detail of his intellectual toil. On the first page it reads thus:

“NOVEMBER 4, 1830.

“FACIUNDO AD MUNUS NUPER IMPOSITUM.

- “1. Memory, Ambulo, Daily Food, and Correspondence ; Voice, manner ; *exercitationes diurnæ*.
- “2. Current Politics in papers ; 1. Cum notulis—daily—Geog. ; 2. Annual Reg’rs.—Past Intelligencers.
- “3. District S. E., Pop., Occs., Modes of living, Commerce, Treaties, and *principles on which it depends*.
- “4. Civil history of U. States.
- “5. Examination of pending questions—Tariff, Pub. Lands, Indians, Nullification.
- “6. American and British Eloquence, Writing and Practice.”

This was the scheme of daily private toils of the man who had more legal business on his hands than any other youth in Essex county. Accordingly his manuscript goes on with a most minute and exhaustive analysis and digest of a multitude of facts, Presidents’ messages, statistics of trade, etc., bearing upon the topics above mentioned. If such was the labor of youth, what must manhood have been in its industry? People who heard Mr. Choate in an

evening on a platform, did not make allowance for his having been jaded all day in Court, and compared his performances with those who came fresh from their libraries and their sleep. Could he ever have rested from professional toil, his public performances would have been far more effective.

The only chronic trouble of his health was very acute sick headache. These were so violent as to prostrate him. "However," said he one day, when he was rubbing his forehead to a blister for his pain, "I've had these confounded things so long, I should be scared into my grave if they should suddenly stop attacking me." Sometimes he could fight them off, but more often he surrendered at discretion and went home.

I am anxious to correct this impression that Mr. Choate was in any degree a sickly or feeble man physically. His greatness was, in his physical energies, quite as much as it was in his intellectual energies. In his youth, when undeveloped, he was feeble, and anticipated an early death, but in his manhood he was mighty in force and stature. Say what we may about the will conquering the body, will can not create a body; and sick men do not do the work of this world. Erskine boasted that for twenty years he had never been kept a day from court by ill health; and Curran could rise before a jury after a session of *sixteen hours*, with only twenty minutes' intermission, and make one of the most memorable arguments of his life.

In his manners and personal address, Mr. Choate was always uncouth. He had no grace of action. In a social or set dress party he was a forlorn looking man.

Mr. Choate never seemed to me what would be called a believing man—a man of faith. He believed in what he saw and in Euclid. Beyond that was the field of doubt and ad-

vocacy. And the moment that field was entered, his intellect of Grecian subtlety saw too many arguments on both sides for unshaken confidence in any thing. The remarks of his minister at his funeral, however, would indicate that he accepted the Christian religion. But when a proof was sent him of a great work on "The Doctrine of the Immortal Life," he thanked its author, in reply, for his work on "*this grand, sad subject of the immortality!*"

His long and lonely walks were a decided feature in his life. He never, during my time of observation of him, walked habitually with anybody, except his brother-in-law, Mr. Bell. After Mr. Bell's death he walked alone. These walks he took early in the morning, in order to be certain to gain his daily amount of exercise before the business of the day involved him inextricably. I told him once that walking before breakfast was exhausting to most people, and I had found it so myself. "You did not give it a long enough trial then," said he. "You may depend upon it it works well."

He used, in later years, to have a little apparatus for making tea in his study in the morning; and rising before daylight, in the winter, he would make his own cup of tea, and work regularly an hour or two at his law before breakfast. He rose early and went to bed very early. He thought the early morning the true time for work, though he told me, when in his office, "Don't be afraid of study. When I was your age, I studied till two o'clock in the morning."

He had a queer theory about his walking. It was that exercise did one no good unless there was perspiration; and in proportion to the perspiration was the benefit. If this was true, *he* ought to have lived a thousand years; for no speaker in our courts ever exhibited more perspiration in the midst of his inspiration than he did.

He was never, within my knowledge, a social man, or in the least inclined to conviviality. For dinners he cared nothing, though if there was intellect present, he liked the good talk. But although I have dined with him alone at his own house, in the absence of his family, and have seen him again surrounded by his household, and have met him at other dinner tables, I never saw in him any of that superficial good fellowship of the table which good cheer and good wine generate. He was not, indeed, a lover of good living. He rarely indulged beyond a glass or two of wine, though sometimes he would drink strong brandy. He said to me one day at a dinner, "Webster never liked *pale* sherry; he said it was a weak invention of the enemy. He went for *brown* sherry; and I like it better myself." Afterwards he observed, "Hot water and tea are the best stimulants for a speaker; they leave no sting behind. But if one must use wine, *sherry* is the best of all wines."

His humor, so notorious, was a purely intellectual humor. It was not the overflow, in any degree, of animal spirits. It was all the sparkle and bubble of a mind for ever in full play. Though he was always saying something laughable when at leisure, even at his own table and everywhere, yet the fun was rather in the intellectual linking of ideas very distant from each other than it was intrinsic, though he often was truly witty. Thus a friend, meeting him one ten-degrees-below-zero morning, in the winter, said: "How cold it is Mr. Choate!" "Well it is *not* absolutely tropical," he replied, with a most mirthful emphasis. Mr. Choate's body sometimes got tired; his mind, so far as I could see, never.

With all his energy, he was never a profane man. He would sometimes swear when no other ferocious word presented itself to express the instant passion of his feeling,

but usually he had expletives in vast variety, for both energy and adjuration. These were very queer. "I'm perfectly *flabbergasted*" was one of his odd expressions; and, again, "I'll eat all the snakes in Virginny if I don't do it."

He would talk himself, in conversation, into a great heat in five minutes, without any intention to do it. I have known him to be lounging on his sofa in his library, and getting interested in what he was talking about to me, he would get up and come at me with the vehemence of a full charge on the jury.

His bust, by Brackett, shows the back of his head, the propelling and animal faculties, as not largely developed. Indeed, I always thought he showed very little animal energy in his speaking, except the spasmodic, muscular and nervous energy which was the result of his will. This theory was confirmed to my mind by seeing him often make a tremendous shout, accompanied with a shattering spasm of physical emphasis upon an insignificant sentence or word, by the thought of which his mind could not have been in any degree enlivened. This tended to show that the ardor was will, not impulse.

His forehead was not high, but wide; and at the base it was prominent and looked worn by hard thinking. Either he had the faculty, which some possess, of moving the scalp at will, or else his mere excitement could set his hair on end; for in his fits of forensic fury, as he spoke, his forehead seemed to lift, his temples to dilate, his hair to stand higher, and he looked of loftier brow than before.

It was a noticeable peculiarity of his conformation that his large ears were set very far back on his head, and very close together. One of his sons-in-law remarked to me, that in observing him he had often thought if he could run

a knitting needle straight through from one ear to the other, it would touch both.

But though his head was rather narrow than otherwise, it got size and strength from its depth. From brow to back it was very long. I have heard it compared in this regard, by one who knew the cast of both heads, to that of the poet Bryant.

His bloodless cheeks were stretched tensely on the bones, as if every film of unnecessary flesh had long since worn away. His eyes were like dark avenues, at the bottom of which was a great light. Weary or at rest, their dark radiance beamed unquenchable. His chin was not massive, but delicate ; and in his moments of excited pathos it quivered in unison with every tearful tone. His complexion, in which so much impression of power may reside, was of Norman, not Saxon stamp. It spoke the French fire ; for in his impulse he was hot, reckless, dashing as the Zouave of Napoleon. But his fire was chiefly in blood : his brain was cool. No impulse ever swept him out of sight of his land-marks. He could put his finger on the right point in his chart at any moment.

But although his complexion was far from light, he could make it look of an ashy paleness. It was said of the first Napoleon that he had the art of withdrawing all luster from his eyes ; Choate had the power of withdrawing all color from his cheeks. In the climax of some pealing passage he would turn round from his jury, facing the crowd within the Bar, with eyes blazing like a wild man of the desert, and his cheeks blanched like white marble. At such moments he would fix his glaring look on some face he happened to encounter, and for two or three seconds, seem to pour a stream of fire from his eyes into theirs. Mr. Everett, in allusion doubtless to the pretur-

natural intensity of this look, spoke, in his Faneuil Hall eulogy, of the "unearthly glance of his eye." Light faces exhibit variety of expression best, but dark faces are the best background for passion. Choate's face had no great variety. But those who sat in front of him, saw as he spoke that his eyes grew blacker, and his cheeks whiter, to the close of his climaxes.

It was sometimes said, that though eminently handsome in his youth, he became homely. To this the reply was, that this might be so, but, at any rate, he was the handsomest *homely* man in the world. Perhaps this remark may help to convey some notion of his appearance. The deep-sunken lines of weary thought seamed his strong face ; the prominent eye-brows, the contorted lips, thin in themselves, but thick in their doubling folds, and the wasted cheeks ; these, while they marked the cruel siege of time upon the beauty of his boyhood, could not obliterate the frame-work of his comeliness, nor mask the fires of genius within, which shone and captivated through every instrument of expression.

It was in 1848 that Mr. Choate took me into his office. He had previously given constant aid and direction both in the collegiate and the professional course of my study. Mr. Crowninshield was his office partner at the time ; and the offices being small, there was some difficulty in taking another student, there being one in the office already, and I believe the partners had once positively resolved never to have another student.

Although no student could be of much if any use to him, —from the character of his business, which was all worked over by his juniors in their cases,—yet Mr. Choate interested himself, with his unfailing kindness, to arrange matters with his partner, and to adjust his office, to gratify

me by making a place there. I shall never forget the morning when, after a week of delay and doubt, he sent for me to his house, and said, extending his hand, "I was resolved to accomplish it: you are a student in my office from this hour."

It may be remarked in passing that it was the worst office for practical good to a student at law in all Boston, for there was hardly any elementary business done there. It was mostly great business, and in its ultimate stages of progress before it was brought to him. And as for any personal instruction from the chief himself, he had hardly time to see or speak to a student from January to December. From my personal relations with him, I was fortunate in picking up many scraps of advice from him; but I imagine that generally his students were sadly disappointed, if they expected to feel the sunshine of his instructions upon their legal pathway. So far from this, he did not know, sometimes, who his students were. And I think I learned more about practical, every-day Law, the Revised Statutes, and making Writs, from his young son-in-law, whom he took into partnership while I was in the office, than from all he himself ever said to me. Choate was for wide and profound courses of study. He put me to reading the Roman Civil Law, the Institutes of Justinian, the German Commentators, and heaven knows what else! But his youthful partner flew lower, and the humbler flight was of much more practical service. Until he came there I do not think I ever saw a Writ, or a copy of the Revised Statutes.

His office, at first, was the well-known No. 4 Court street—an Entry long famous for its influence in the days of the old Whig party. It used to be said that all the Governors and Senators of the commonwealth were made

in a back parlor in Beacon street, and up stairs in No. 4 Court street. Charles Sumner had his office there on the same floor with Mr. Choate, and George Hillard, and other luminaries of the dominant party, as they were then.

Mr. Choate would always shut the door between his two offices, shutting himself up in his inner sanctum, and there untiringly he worked, worked, worked. He had his pen in his hand always. It was his weapon of warfare. He had a high stand-up desk, and in front of it a queer high chair, made so that a person could slightly sit upon it while yet standing up ; probably something like the contrivance on which Queen Victoria half sits and half leans upon the royal reception days. Screwed up on to this pyramidal chair, with his feet on the ground, he was always to be seen pulling over sheets of manuscript and making notes from law books. There was a table in the office, but I never once saw him sit down to it. He never sat down anywhere if he could conveniently help it. He always stood up or lay down. Accordingly, he was much oftener on the sofa in his office, than in a chair. I believe this was on account of some peculiar physical effect which long sitting produced upon him. When he was not in court trying a case, he was a fixture at his desk with pigeon-holes full of papers in front of it, and a broad background of the books in buff behind him. Nothing distracted him from these labors, but business, or a talk about books, or some philosophical or historic theme. Start him on any such topic, and, if not extremely busy, he would turn right round from his law, pen in hand, and commence talking on it with as much fullness and readiness as if he had been elaborating it for a week.

I recollect particularly, one afternoon, saying something to him upon Alexander the Great. He immediately

launched out into a brilliant disquisition upon the Man of Macedon ; describing the magnitude of his ideas, his Grecian nationality, his Asiatic scheme of empire, his inevitable destiny, Grote's history, etc., in a manner erudite and interesting enough for a crammed lecture in a popular historical course.

If he ever paused to say any thing not on business or books, it was something witty, or mirthful. Nothing occurred, no odd person came in, no peculiar thing was said, that the laugh did not echo after it from some *curious* observation of Mr. Choate upon it.

Sometimes when nobody said any thing suggestive of a joke, he would perpetrate something on his own account. One day he came stalking out of his inner office into the outer one, and, looking across the street, his eye caught sight of a bird-fancier's establishment opposite. "Why," said he, "I did n't know we were flanked by nightingale's nests." Any student of his was always delighted to do any thing in his power for him. In a hot summer's day I remember running all over Court street and the lawyers' quarters, with messages, to get him ready to go to New York that afternoon. And he made me feel more than repaid by the kindly word of thanks he expressed, not in the ordinary formal way, but by saying, as he rubbed his tangled head, "You are a great comfort to me."

I never remember seeing him collect any money, or make any charges in any books. Indeed, I never saw any account books in his office. He himself never seemed to have any money. If he wanted any, he would get me to draw a check for him, even for five dollars, and he signed it. If he drew the check himself, he made sad work of it. It used to be said round the Entry, that when he had to go to Washington to argue cases, or to Congress, he often was

obliged to ransack the Entry to find some one with money to lend him to go on with. Unlike some others of the fraternity of great men, however, he very often paid what he borrowed.

His accounts of who owed him and how much, he must have chiefly carried in his head. His office partner could not have known them, and there was not seen there any book of original entries. One of his old students of former years, however, used to come in to us and tell the story of a traditionary set of books which Choate commenced with the intention of keeping them by double entry. So, on the first day he opened them, he had occasion to send out for a gallon of oil—it was before gas days; accordingly he entered in the bulky volume, “Office debtor one gallon of oil,” so much. A few days after, an old client came in and asked for his bill. Choate told him he really was very busy and if he’d call again in a week he’d have it ready for him. In a week he called again and demanded his bill. “O, yes,” said Choate, “I really,—you must pardon me,—but I’ve not had time to draw it off; but you may pay whatever you think right.” This did not suit the client, who said he’d call once more; and so he did a fortnight after. This time Choate was in despair. “Well there,” said he, “take the Books and just draw off a minute of the account yourself.” The worthy man took the Book, despairing of any other information, opened it, and there at the top of the page, in staring characters of vast size to make them legible, was the entry, “Office debtor one gallon of oil,”—standing as lonely on the page as its author in his life. He never asked for his bill again, but paid what he thought fair, and asked for a receipt in full, which Mr. Choate promised to have ready for him, next time he called.

Mr. Choate very often, however, made a sudden foray and raid upon his clients as he happened to recollect them, if he found himself unexpectedly in want of money. And woe be to any unfortunate man then, who had a heavy case actually on trial. He had to pay for all the sins of omission of his predecessor clients for many weeks.

There was a great joke wandering round State street for a long time, in the shape of a promissory note payable *on demand*, drawn by Webster and endorsed by Choate. It was shaved again and again at the most fluctuating rates.

All this was his way of doing things in '47, and from that time till he took in his son-in-law as Partner. Then all was changed. And I used to console myself with the reflection, that now he would be fully able to obtain and enjoy a well deserved competence.

It was, however, a singular paradox that his scale of charges in his mind, his ideal of a professional account, was rather high than low. If he named any charge, he named a pretty fair, though never extravagant one. I think as he grew older, he was somewhat talked into putting a proper estimate on his own services. Sometimes his want of discrimination in this regard operated hardly. One day, a poor fellow from Charlestown, who had a snug trifle accumulated by daily labor, came in with his Tax Bill, "to consult Rufus Choate" as to whether it was rightly levied or not. Choate turned him over to me, at the same time vaguely indicating the principle and authority which must be looked up. Occupied in trying a large case, he did not come back to the office for two or three days. Meantime, I had brooded laboriously over this almost the first professional matter ever entrusted to my hands. The "opinion of Rufus Choate" was elaborately prepared by me, and when at last he did come back to his office, I presented it to

him for his scrutiny and signature. He looked it over, and scrawled his autograph at the bottom. "What shall I tell him is your charge, Mr. Choate" was my next inquiry. "Well," said he, "I think we ought to have \$25 for that, don't you?" Of course I acquiesced, though it seemed to me then a fabulous sum on so trifling a matter, for the whole Tax Bill was only \$10. When the client came, I presented him the "opinion," and told him the charge. "Twenty-five dollars!" he exclaimed, "why I think that's too much! I haven't got but \$15 ready money in the world." Of course he was let off on payment of the \$15, but not without much misgiving on my part, lest the master of the office would be displeased. When Mr. C. came in, I hastened to tell him that I had given the Charlestown man his opinion; and then I waited anxiously for what, in my ignorance of him, I supposed would be his inevitable question, "Did you give him the Bill?" But no such question came, or would have come to the day of judgment. So, in a moment, during which the whole subject seemed to pass away from his mind, I ventured timidly to suggest that I couldn't collect the Bill. "Ah!" was the only reply. "No," said I, "the man said he hadn't got but \$15 in the world, and he paid that." "Oh," said Choate, with a rich smile mantling over the lower part of his face "you took all he had, did you? Well, I've nothing to say to that—*that's strictly professional.*" It need hardly be added that he himself neither saw nor asked for a dollar of the money. It was divided between the students in the office.

In the last year of his life, when a cause in Dedham had been dismissed, he argued a motion for allowing his legal costs. This was resisted, on the ground that the court had no longer any jurisdiction over the case or any

thing connected with it. Choate, in reply, speaking very slowly, said, "The construction of my brother can not prevail. We must have our costs now or never. If we should apply to the court to be allowed them *before* the final adjudication, your honor would say to us, *paternally*, 'Wait till your cause is done!' The truth is, we lawyers have, in the progress of the case, a few fees, a little *refreshment* by the way, but we wait till all is over for the full banquet." The court granted his motion.

Although his office was littered with books, papers, blanks, speeches and antique *debris* of every thing professional, yet he had a decided aversion to any thing bare or hard-looking in or about it. A small place in the wall was uncovered by the removal of a book-case. He took pains carefully to hang up a map there to hide its nakedness. The old carpet, which had probably not been changed since he came to Boston, now began to give signs, too palpable for misconstruction, of decay. He asked me to "*indicate* what sort of one I preferred." I suggested an oil-cloth carpet of pretty pattern. "Oh no," said he, "it's too cold a material. I'd rather walk on *marble* than oil-cloth." The discussion ended, I believe, by his leaving the whole matter to the colored woman who cleaned the office, and a glaring red carpet soon stared us in the face as the result. However, it was thick and felt warm, and looked coarsely rich, and he was apparently entirely satisfied. But observing that a place hidden in a corner was uncovered by carpeting, he was not satisfied till it was covered.

When he could do so without displeasing anybody among the various *attachés* of his office, he would shut himself up alone in his inner room. He always preferred to be thus alone. But if a student happened to be in

there, it must be a very stringent necessity that could drive him to intimate, personally, his desire for his exit.

It was very amusing sometimes to hear him converse with strangers who brought new cases to him. His language of advice was often so uncommon. Once, as he was lying on a sofa, I heard him dismiss a worthy mechanic, who had brought a trifling matter to him, with the direction, "Well, go home now, and *reconnoiter* the whole scene, the persons and all, and come and tell me the result of your observation." The good man went home, but whether he ever knew how to "*reconnoiter* or not we never heard.

Mr. Choate was stubbornly regular at his office when not in court. No weather and no sickness but the most severe sick headaches kept him away. It was always a dull day with us in his office when he did not come. He seemed, although he said so little, to bring so much light and glory and history with him when his dark face and bright smile looked cheerfully down upon us over that high yellow desk. Even if he was too unwell to be up, he would come to the office and would lie on his sofa and advise with clients.

One morning, he came up from Plymouth, where he had been making a political speech, and entered the office, looking as if just up from his grave instead of his bed. He threw himself on his sofa, and lay there studying and talking to clients all the morning. I asked him how he got along in his speech. "Got along?" said he; "I didn't get along at all. I told 'em all I knew, for more than an hour, and I might as well have talked to the dead."

Daniel Webster used to come into the office sometimes to see and consult with Choate. He would come stalking in heavily, like a great three-decker surging into harbor.

It was very interesting to see them meet thus in an office. Choate told me, more than once, he thought Webster the greatest lawyer in the world.

He used to get up sudden enthusiasms for various authors, and sets of authors. I could always tell by his accidental remarks during a day what course his last literary impulse had taken. One day he came down to the office full of Blackwood's Magazine. Said he, "There's a capital article in this number, 'Ancient and Modern Oratory.' It's got every thing in it. *It's all there.*" A little book on Rhetoric, by Prof. H. N. Day, of Ohio, I also recall as exciting him to study over that subject again with fresh life. These books he at once offered to lend me; "but," said he, "*return them* when you are done." His books were the only things he guarded with care. In the midst of all his avocations, if a book borrowed from his private library was not returned, he would remember it, and remind the borrower of it months after it had been taken. He knew, and valued with a special interest, each individual book among his thousands. Meeting him one day casually in the street, he said, "I've just got a fine edition of Bolingbroke's works from England. My old set of him I picked up from various editions. It's too good to be lost, and I'm going to give it to you;" and then he added, "I might give it to Rufus (his son), but I don't believe the little devil would prize it much." Accordingly he remembered to send it, with an indescribable scrawl on the fly-leaves, which I have always presumed was the name of the giver and receiver of the volumes.

One of his great recreations was, on Saturday afternoon, when the courts were all silent, to lounge into Burnham's famous antique bookstore, and spend hours in glancing over and glancing through the multitudinous seas of

books imprisoned there. This habit was not confined to Boston in its exercise. A well-known dealer in old books in New York has said since Mr. Choate's death: "The great lawyer was accustomed, when he visited New York, to spend hours among my books." One occasion he particularly recalls thus: "About ten years ago, while on a visit or passing through this city, Mr. Choate called at my store about ten o'clock, A. M., and introduced himself as a lover of books and an occasional buyer, and then desired me to show him where the metaphysics, the Greek and Latin classics, stood. He immediately commenced his researches with great apparent eagerness, nor did he quit his toil till he was compelled to do so by the store being shut up; thus having been over nine hours on a stretch without drink or food.

"He remarked that he had quite exhausted himself, mentally as well as bodily. He had been greatly interested, as well as excited, at what he had seen; 'for,' continued he, 'I have discovered many books that I have never seen before, and seen those that I never heard of; but, above all, I have been more than overjoyed at discovering in your collection a copy of the Greek bishop's famous commentary on the writings of Homer, in seven volumes, quarto—a work that I have long had an intense desire to possess.' He afterwards purchased the precious volumes. I had the seven volumes bound in three, in handsome and appropriate style. These works, no doubt, still grace his library.

"He was very anxious to procure an old school-book, which had been a favorite with him when a boy. It was a collection of pieces by the best English authors, the title of which now I have forgotten. 'The book,' said he, 'was put into my hands by my worthy mother, and I must confess the frequent perusal of it in early years has had much

influence over me ever since ; for the reading and rereading of these pieces was to me a labor of love and devotion. Ever since, I have tried to procure a copy of this book but never succeeded.'

"The Greek bishop's commentary alluded to was that of Eustatius (Archbishop of Thessalonica), who was born in the twelfth century, at Constantinople. He was the author of the well-known voluminous commentary on Homer, written in the same language as the Iliad. His commentaries were first printed at Rome, 1550, in two volumes, folio. Besides these commentaries, he was the author of several other critical works."

Mr. Choate loved to read writers of long, swelling, stately sentiments, and of ardency. De Quincy he often spoke of. But, he said, he was something of an *old Betty*. Of the young Scotch writer, Bayne, whose essays had recently been brought out in Boston, he remarked to me, "I read every word of Bayne."

"Literature," he said again to me, "is full of enthusiasm ; life is not." "Ah !" said he once, in a speech before a Legislative committee at the State House, "Pardon my emotion, Mr. Chairman—I was thinking of the days of my youth."

Like Fisher Ames, he loved to read the Bible in his young days and in his manhood. He attended to it carefully at church, and quoted from it constantly in speaking. He was never tired of reading the English orators, and talking about them. Brougham, he said, was not a real orator. Grattan he always spoke of with enthusiasm. His speech commencing, "At length I address a *new country* !" he thought was his finest. It was delivered after the great concessions made to Ireland by England in the day of "The Irish volunteers," which Grattan affirmed emancipated Ireland.

Mr. Choate said, "Some one should write a History of the Ancient Orators. There is no book in all my library where I can find *all there is extant* about any ancient Orator." He earnestly advised the author to undertake it. In pursuance of the idea, an article on "Hortensius" appeared in a Review as a beginning. He spoke with enthusiasm of the satisfaction it gave him; saying it was a new revelation to him, for he never *knew* Hortensius before.

He was a thorough reader of the daily newspapers, besides all his mass of legal and literary studies. In a moment's glance he would seem to take in all the salient points of the paper; and afterwards allusions to its incidents would be very likely to appear in his speeches. The newspaper topics of trifling but instant interest were quite as much relied on by him, in his argumentative illustration, as those of erudition and magnificence.

All his Law seemed to be at his instant and exact command. A poor fellow cut up by a railroad collision hobbled in one morning, to sue the Company. Choate said instantly, "The poor man can't recover. It has been recently decided that the employee, situated as this man was, has no remedy against his employer. Turn to such a volume of the Reports and you'll find it." I looked, and there it was exactly as he said.

After being admitted to the Bar, he often gave me advice and assistance on law points. Happening to mention to him the first case I ever ventured to carry up from the Common Pleas on "exceptions" to the Supreme Court, he immediately replied, "Why you ought to get that case. I see the point. But the trouble will be to make them (the Judges) see it. But your law is clearly right."

The case had been ruled out of Court twice already, and it was therefore the more gratifying to hear his prompt

endorsement. When it finally came up for argument in the Supreme Court, Mr. Choate's extempore view of the case was ratified. For the exceptions were sustained, and the case ordered to be heard again. I remember another, a criminal case, where he exhibited the same quick mastery of law in conversation. The case was an indictment for putting the hand into a pocket with intent to steal. It fell to me, accidentally, owing to the sickness of another lawyer. The point was taken, that the government must show there was *something in* the pocket, before they could convict; for clearly it was not the defendant's intention to steal, if he found *nothing* in the pocket. Pending the decision of this point the Court adjourned for the day; and I hurried to Mr. Choate to ask his opinion. He thought it over for a moment or two and then said, "I don't think it will stand." He then discussed it *pro* and *con.* a few minutes, but still concluded "it won't stand." Going back to my office and hunting for an "authority" I came upon one recently decided and published in one of the very last volumes of the Reports; it precisely overruled the very point relied upon.

Here Mr. Choate did not know of the decision, but his legal analogies were so accurate in his mind, that without "authority," he disposed of a point which certainly seemed very plausible.

It was very difficult for Mr. Choate ever to say "no" to anybody. He always said "yes," to all who came. I do not doubt he personally intended to do every thing he said he would. But the difference between the things he wanted to do and those he did not want to do, was not in what he said about them; for he said exactly the same things about both; but it was, that somehow it happened that the latter things *wouldn't get done.* There was the same cordial-

ity in talking about them, the same apparent interested intention to do them ; but the latter class of things never were done, nevertheless. This involved him in a good deal of trouble about engagements, cases, and matters relied upon to be finished.

It was not this facility of acquiescence, however, merely, but a higher and kinder motive which often led him to take cases of poor and oppressed people whose pay was very slim, when he might have had higher pay from others, for less exigent cases.

I think he had a good deal of taste for the drama. He took a refined delight in hearing Fanny Kemble's Readings. He promised me he would go to the Boston Theater to see Edwin Booth's acting ; and he was often observed prowling around the back seats of the Museum to laugh at William Warren's irresistible fun.

He was solicitous about where and how he should speak, when the occasion was other than in Court. In Court he cared nothing about the arrangement. But he more than once sent for me on other occasions, as a friendly observer, to advise with him about what Hall he should speak in, and other particulars. He knew as well as I did, that his rich voice was not ringing and resonant ; and therefore he never went into the great Music Hall for his addresses.

He had a singular reluctance apparently, to have any of his students or friends go to hear him speak. In the first days of my experience of him I suffered from ignorance of this trait. For when he was expected to speak before the Whig Convention at Worcester, I asked him if he was going to speak, and where. "Oh, no," he replied, "I shall either say nothing or a mere remark or two. I'm not going to make any speech." Accordingly I did not go up to Worcester, and lost one of his most fervid and inter-

esting efforts ; a speech of which it was said at the time, that in the frenzied energy of his delivery, he literally split his coat in two in the back, from collar to waistband. This peculiar reluctance to promote anybody's wish to hear him, I think proceeded from unaffected modesty as to his own performance. He was always apprehensive beforehand as to how he was "going to get along" in any effort.

The prince of orators, Cicero, said long ago, that he never spoke without first trembling, until his own voice reassured him. Probably, this preliminary nervousness in really great orators is the pledge, as well as prelude, of their success. Mr. Choate, besides this special anxiety, had a uniformly humble opinion of his own eloquence. If he could avoid it, he would not put himself in competition on the same stage, with many a reigning orator whom the world thought decidedly inferior to him.

He might be pardoned for a modest hesitancy to speak on the same occasions with Mr. Everett. But it certainly was more than suspected at the time, that the sickness which caused his absence from the first Webster birthday banquet, in Boston, was promoted by the knowledge that Edward Everett was to be there in full force. Yet their styles of address were so different, that each would have been a new and an equal treat.

When one of his great cases in court was ready for argument, I had ensconced myself in a snug corner ; with infinite difficulty, as the crowd was great. Just before he rose to speak, he spied me out ; beckoning me to him, he sent me to the office for a law-book. I knew if I lost the seat, it could never be gained again, and I felt sure that his main object was not so much the book as to dispense with an auditor. So trusting that in the heat of the argument, which he was just rising to open, he would forget all

about the book and me, I sat still and heard him till the intermission. Then, as I expected, he did not allude to the book again, and my opinion as to the motive of his sending for it was confirmed.

Celebrated as he was at twenty-one, and never submitting to any probation of unappreciated struggle, it was, indeed, surprising that he should have been so free from all vanity. He had no personal or intellectual fopperies whatever. The vanities of Erskine and Pinkney were to him incomprehensible. I do not believe he ever said a single word which could tend directly or indirectly to his own laudation. Of self-seeking or self-praise, he was as innocent as a baby.

His modest appreciation of his own eloquence did not lead him to belittle that of others. He gave them hearty praise. The eloquence of Kossuth he often expressed unbounded admiration for. That passage in which the Magyar paused in his speech, in England,—“Pardon me, I thought I saw the thousands of my countrymen pass again in review before me, and heard them shout again ‘Liberty or death’”—this passage he cordially praised as a great burst of eloquence.

He could bear complacently to hear Henry Clay’s eloquence praised, even though it was in some degree at the expense of his own.

Young Burlingame, he said, has an “eloquent utterance.”

The article which I wrote upon his Eloquence, and which is in this book, was thought by some of his mistaken friends to disparage him, because it pronounced him not a “natural orator.” He himself, however, hastened to assure me, in a note which I still have, that he considered it “kind, friendly and fully appreciative.”

It is unfortunate for his posthumous fame that his handwriting was so hieroglyphical. A man might puzzle out the autograph of the Egyptians on the face of the Pyramids almost as easily as Choate's Coptic caligraphy. His students studied it like any other dead language. While actually in his office and with him, I had puzzled out his alphabet sufficiently to read a good deal of him, but never quite to read all. And after leaving him, the knowledge soon escaped so that now his MS. is again a sealed book to me. When his letters used to come from Europe, they would have to lie by and be referred to at intervals of time for days before I could grasp their full sense and words; and then it would often be by running the eye along the whole line and taking it in by a sort of guess-work and flash, rather than spelling it out accurately.

When the time of office study was up, he made the motion in the Supreme Court for my admission to the bar, and I shall never forget how nervous he was about that simple motion. It was a little out of his ordinary beat, and he seemed quite flustered as he made the motion in open court and stated the particulars to the shaggy-looking Chief Justice. After it was done, however, he encouraged my spirits and inaugurated the hopes of a new-made attorney, by telling me, "You need not fear for business. There's always room for *one* more!"

When, at last, his office was finally left, there mingled with the pleasure of entering upon scenes of real life much genuine pain at losing the constant presence of this delightful man. His greatness and his sweetness were an inspiration to all who saw him nearly.

A friend, who also was a student in Mr. Choate's office, but ten years before my time there, has kindly sent me the

following reminiscences of *his* student life with him. It differs somewhat from my own later observation of him, especially as respects his discrimination in cases and fees. But it is another and interesting view of him, taken in the same office, at the period of his first coming to Boston.

REMINISCENCES OF ANOTHER STUDENT.

The first time I saw and heard Mr. Choate was at Andover in the spring of 1835. He was then living in Salem, with something of a Congressional reputation, and great local celebrity as a lawyer and advocate at the Essex bar.

Novelties were then rare in Andover, and all the students were on the *qui vive* to see and hear the legal *celebrities* of old Essex.

The case was before three referees, I think, and was about some machinery, of little general interest except to the parties. Hon. Leverett Saltonstall was his opponent, and a fine lawyer and gentleman of the old school. I well remember my first impressions of these two intellectual antagonists. Choate, while preparing for his argument, was walking across the hall, clad in his favorite brown sur-tout—ever and anon thrusting his hands through his raven curls, not then tinged with gray.

Saltonstall seemed to me out of temper, and irritable; although his personal appearance was highly dignified and venerable, and his arguments and address able and artistic.

When opposed to Choate, I have heard that Saltonstall was often nervous, excited, almost petulant; especially before the Twelve, with whom his great compeer was always omnipotent.

Saltonstall was like the Austrian general of the old

school, the perfect soldier ; Choate, in his strategy and attack, had the boldness, the independence, and the impetuosity of the young Zouave.

Out of the dry bones of his dry case and its surroundings, Choate then and there framed an address which captivated a large and most discriminating audience.

There were many theological students present, generally disposed to be critical ; as well as other students in classical literature. All were delighted.

I remember, in this speech, a gorgeous description of those Andover sunsets, which have been so often lauded by poets and enthusiasts ; but although I have been many times thrilled with these attempts to describe those beauties of nature, that speech to those referees, in the hall of the Andover tavern, stands out above them all.

Almost anybody but Choate would have broken down in the attempt to soar on such a pinion in such a case. But, at such times, he knew no such word as fail, nor did his auditory.

Our seminary critics, in their judgment upon the address of the eloquent advocate, were united and cordial. If there had been any thing of the *exaggerated*, or florid, or bombastic, these men would have been the first to detect and condemn.

I entered Mr. Choate's office as a student in the fall of 1835, at the old No. 4 Court street. At that time he did a large office business. He had a very heavy docket in Essex, and was absent there attending court two and three weeks at a time. There was a good deal of office work for the students to do—a good deal of copying.

I remember the first time I undertook to copy from Mr. Choate's manuscript. He had himself drawn off about a page in his own inimitable chirography, which he read

over to me, and requested me to copy and insert in a Writ. It was a "Declaration," I think. He was then leaving the office. I got along pretty swimmingly for a few lines, but was soon brought up. I worked and worked, but in vain. The perspiration fairly ran off from me, in my nervous excitement to accomplish this duty. A kind neighbor gave me a helping hand in this extremity, and I found daylight. The person who gave me this friendly aid in deciphering the chirography of Mr. Choate, was Charles Sumner.

Mr. Choate was a careful and accurate pleader ; and I always considered him a very neat and skillful conveyancer. How could he be otherwise ? With his great knowledge of the law, its principles and practice, and with his knowledge of his own vernacular, so copious and yet so exact, you would expect to find accuracy and neatness in all his legal writings.

During the first few years of his practice in Suffolk, his criminal business was large ; and, unlike most of our eminent American lawyers, he never wholly declined retainers in the criminal courts. But my recollection of his habits in these cases is, that he was very particular as to what cases he took. From 1835 down, I know that while he was as open and free as daylight, to any class of clients on almost any respectable class of civil business (and too open, and free, and liberal for his own advantage), he was very rigid as to his retainers on the criminal side, from my earliest knowledge of his habits. The case must be a good one, and the retainer \$100. If the statistics could be procured, they would show that Mr. Choate had tried a good many criminal cases in Suffolk. I remember now but four capital trials in which he was engaged for the prisoner, in Suffolk.

I had occasion once to ask him in behalf of a celebrated divine, for a reference to some of the best authorities on the true province of the advocate in defending prisoners; in short, as to the old slander of lawyers defending or prosecuting bad cases.

In the course of our interview, he said, no better answer could be given than Dr. Johnson made to Boswell on the same subject. "Sir, you do not know that your client is guilty until proved so, under the law;" or something to that effect.

He said that his own experience in criminal cases was large, and in the whole course of his practice he never had a client who did not persist in declaring his own innocence from first to last. He said that his legal preceptor, Judge Cummins, who had a large practice in Essex, told him a similar experience. The judge, however, had one client, who admitted to the judge, his counsel, that he was guilty. He was tried, defended by the judge and acquitted by the direction of the court, on legal grounds.

What readiness Choate had!—there was no branch of law in which he could not readily answer the questions of his junior legal friends, or at once refer them to some authority where the mooted point was discussed.

He always took a deep interest in discussing legal questions with his young friends: and did it cheerfully, copiously, lovingly.

How liberal he was with his treasures of learning to his professional brethren. His friendly advice was always ready, and given without grudge from the affluence of his great storehouse.

And yet what laborious, and careful and plodding preparation he made in the plainest of cases!

When occasion demanded, he was the readiest of men:

and he undoubtedly did enter upon cases without much preparation.

But ordinarily, his preparation was elaborate. He loved to exhaust the subject. His respect for the Bench led him to make thorough preparation of the law of his case : and when his case was for the jury, he remembered the twelve who were to pass upon the facts—for he always, as he said, *went in for the verdict*.

Hence his preparation of a case was generally thorough.

I have known him hold two consultations with his junior, preparatory to a hearing in the Probate Court on some motion for a new bond ; and I have known him equally elaborate on a motion to amend some interlocutory decree in the Superior Court.

Those who have been his juniors in the preparation and trial of causes, will remember how he made them work.

His favorite book on Evidence was Phillips (Hill and Cowen's edition). It is generally admitted that there is almost every thing in that copious and valuable but cumbersome and ill-arranged book ; but a good many inquirers have difficulty in finding what they want there.

Choate had a way I always marveled at, of putting his finger right upon the matter he wanted in Phillips.

His preparation of his briefs for arguing a case to the jury in the progress of a cause was marvelous.

His minutes of evidence were always fully taken by himself in those goose-track characters infinitely more illegible than the cramped piece of penmanship of Tony Lumpkin.

But in addition to these notes of the evidence which he was taking with such minuteness, and simultaneously, he was jotting down his closing speech to the jury—word for word, and figure for figure—when the occasion required it.

His brief, for addressing the jury, was full—very ;—illustrations, etc., all written out. But in his speech he rarely looked at a writing. It has occurred to me, that the mere act of putting upon paper his thoughts stamped them upon his memory.

Those copious notes of the evidence which he took, on the trial of a cause, I have sometimes thought were for the information of court and jury, and not to aid himself. He forgot nothing which was said, and no incident that took place at the trial.

With the jury, I think, no lawyer of our country was more successful.

His power over them was in his eloquence, in thorough knowledge of his case, in an able presentation of it, and in defending it against attack.

His power over juries was fair and honest, and legitimate. He never tampered with any of the panel inside or outside the court room ; and was an utter stranger to the thousand ways in which unscrupulous attorneys or parties practice upon the prejudices, or passions, or interests of jurors.

Mr. Choate endeared himself much to young men, especially of his own profession ; but everybody loved him, young and old. There was a charm about his presence, which drew at once to him the heart of youth and the regards and warm attachment of riper years. He was so genial and affable.

When he first came to Boston, some of his old Essex clients followed him ; fine old litigants, the heroes of a hundred battle fields. Stout old farmers with whips in their hands, seemed to enjoy with the keenest relish, the presence of that refined and elegant scholar and jurist.

I never knew or heard of his saying an unkind word in or out of court.

He was sometimes in such great demand, that the conflicting interests of his clients could not be attended to. A man with one lawsuit never forgets it, and likes to remind his counsel of it occasionally. In the minor details of cases, clients would often feel aggrieved, and sometimes would complain.

To one of these, who really had some cause to mourn over the law's delay, and who was just about opening a statement of his grievances with dolorous visage, to his counsel, Mr. Choate said, at the moment of his entering the office, "Mr. C., I suffer with you daily." The client was at once mollified by the genial, kindly and sympathetic tones of his professional advice.

Another client who, in a very long and tedious equity case had employed associate counsel, at Mr. Choate's request, was complaining to Mr. Choate, rather tartly, that he could get no satisfaction from either. "It seems to me, sir," said the client, "that I am like a man between two stools, I shall fall to the ground." "Rather," replied Mr. Choate, "like an ass between two bundles of hay."

In his closing argument to the jury, in an important insurance cause, in which one prominent subject of discussion was the course of trade, and the season of crops, and the judgment to be used by the captain of the vessel, Mr. Choate was commenting, with much earnestness, on the fact that his own captain had intelligently planned his voyage after leaving a particular port, with reference to the known usages of trade and the seasons. "Why, gentlemen," said he, "what was this captain doing all the time? Was he consulting upon the interests of his vessel

and her owners, or reading Robinson Crusoe, or *playing at all fours* with the mate in his cabin?"

No book would be so interesting as the diary of a lawyer in full practice, with graphic pictures of the persons and incidents, old and young, rich and poor, male and female, without distinction, mingled in the scene. Now it is success, and now disappointment; business embarrassments and family troubles; injuries to the person and the character; the subjects of inquiry are as varied as time and humanity.

No lawyer had so many characters who visited him, from time to time, as Mr. Choate. Among these was—say twenty years ago—one Captain Ashton, a short, wiry, quick little Englishman, who claimed to have been once in the British army. He was a frequent visitor at Mr. Choate's office, and very chatty.

He claimed to have loaned several thousand dollars to a trader upon a mortgage of his stock. The trader failed, and his creditors contested the mortgage. They urged that the captain had no visible means, no property, and couldn't have had the money to lend on mortgage; and, moreover, that the trader's stock of goods was so small, and his assets so deficient, that he couldn't have had the money.

Captain Ashton contended that his money came to him from England in sovereigns, and that he lent this gold to the trader.

It looked rather dubious for Ashton.

Mr. Choate prepared to try the case for plaintiff Ashton. It was to come on at Lowell.

The plaintiff's witnesses were summoned to meet Mr. Choate in a room of the hotel. Ashton hadn't met his debtor for some time. Mr. Ashton and his counsel, with

witnesses were in the private room, when the mortgagor, who had been notified to attend, came in. Ashton sprung at him like a tiger. "You scoundrel," said he, "you have cheated me ; you have robbed me of my gold !"

Mr. Choate remarked to the writer, years afterward, in speaking of this case, "That incident satisfied me my client was right. I knew it and felt it, and knew that was the case for me. I care not how hard the case is—it may bristle with difficulties—if I feel I am on the right side ; *that cause I win.*"

Mr. Choate got a verdict ; but it was set aside for some cause ; and before the second trial Ashton had disappeared. But sufficient facts were subsequently developed to leave no doubt that Ashton's story was true.

CHAPTER IV.

PROFESSIONAL REMINISCENCES.

IN order to treat the scattering reminiscences of years with some consecutiveness and coherence, it will be the purpose of this chapter, to grasp in one view the chief points of recollection of Mr. Choate as he was, in his preparation for the court room, in the court room, and in his office. In this aspect he is most naturally to be looked at, inasmuch as the legal arena was the true forum of his life; and on his tomb-stone he would chiefly have desired that the chiseled epitaph should be, "The great Advocate."

His plan of the proper preparation and accomplishment of a lawyer was a magnificent one. It was almost as comprehensive as Cicero's scheme of education for an orator; which made all knowledge and all art essential tributaries to the true speaker's brain and tongue.

CHOATE'S PLAN FOR A STUDENT AT LAW.

In the first place, of course, the principles of the common law of England, the basis of our own, were to be mastered. Its adaptation to republican America was to be marked, and the modifications it underwent with us, according as the different elements in our constitutional system of government grew or shrunk in relative importance. To this end, therefore, American history was to be studied carefully and critically. Often, in discussing law before

the Court, he would himself not only enliven the discussion, but throw vivid light on the construction of the mooted provision by calling the attention of the judges to the particular phase of national or political history out of which the provision grew.

The Statute law also was, in some measure, to be made familiar. The annual reports of law cases decided, he kept up with fully himself, and recommended the same course to others.

The study of the elementary writers and the text writers, who collected all the law upon any one point from the numerous decisions, he did not disdain. And he recommended, in studying the text-books, a plan which he said he had always pursued himself; that was, to "break up a book," as he styled it, pen in hand, into many subordinate little books; taking from every part of the book whatever referred to one single branch of the subject treated, or a leading view of the law, in one prominent aspect. Thus the literary consecutiveness of the book did not go into the mind, as the legal consecutiveness of the topics examined. And the subjects were better digested, and grasped into more complete possession. He was no friend to lumbering up the mind with undigested crude matter. He wanted every thing done, to make what was on one's brain available and ready for delivery in the mass or in detail. Another practice for a student, which he earnestly recommended, was to take any old reported case, read its marginal statement of the facts, then shut the book and study out for yourself what ought to be the law on that state of facts. Having come to the conclusion, and *written it down* (for again and again he would insist on *the pen* as the great instrument of accurate thinking), then reopen the book and compare your own opinion with the judges' reported

decision ; compare the conclusion, and the course of argument by which they arrive at it. "Thus the judges of the Supreme Court," he would say, "become, without knowing it, your own critical legal school teachers."

But besides the English law, he had himself pursued, and was wont to advise, a diligent study of other systems of jurisprudence. The Roman law he particularly insisted on. He thought its reasonings on points of contested rights between man and man, most instructive and liberalizing, even to the student of common law.

These foundation studies of the lawyer he was in favor of pursuing, in the first instance, in some law school ; undisturbed and unconfused by the details of office practice. Thus from this retired study of a year or two, he said, a man would get a general but commanding view of the whole body of the law ; and afterwards, in an office, he could apply his principles and grapple with the daily details of business.

But far beyond the immediate studies of the law, his professional idea ranged outward and upward into the region of general studies and the politer letters. From his intimate acquaintance with literature, some have ranked him with that weakest class of all the servants of the Court—a literary lawyer. He was no literary lawyer—a lawyer who aiming to practice in the Courts, thinks more of his literature than of his law—less of his musket than of his uniform. No ! he was a hard-headed, strong-brained lawyer ; a great lawyer, who knew letters ; but to whom literature was the slave and not the mistress. I have no doubt, from the opinion of others, as well as my own humble judgment, that he knew the law better than Erskine, better than Wirt, better than Emmett ; although he had not the Titanic grasp of first principles in the law which

Webster held when roused ; nor the prodigious stores of law learning and black-letter of which Pinkney justly boasted.

But literature to Mr. Choate was of direct service ; and in a double way. It quickened his fancy and ingenuity, it enlarged his mind, without taking away from him the power to narrow down its proportions again to legal dimensions ; the giant of the Arabian story could get out of his small cell, but could not shrink his colossal bulk back again at will—but this giant of the law seemed to have the expansion and contraction of his intellect at equal command. This general literary culture, moreover, was of essential service to Mr. Choate as a mental relaxation and a pastime.

I think, at periods of his life, he was conscious of brooding apprehensions as to the permanent integrity of his faculties. They were so fine and delicate, yet burned with such lightning velocity in their action, that he could not help remembering with a melancholy interest the poetic aphorism, "Great wits to madness nearly are allied." It was often predicted that, like James Otis, he would find his mind unhinged at last. But he looked into his beloved library, he summoned up his studious recollections of fifty years of enthusiasm, he went the rounds of his track of daily labor ; and the great intellect kept on its balanced course on even poise, strong and steady, no oscillation on its level plane—moving more serenely and surely and calmly, till in the full exercise of all its enginery, at last it abruptly stopped.

In every way, he made literature servient to his law not dominant over it ; if he summoned the Muses around him as he stood before the Jury panel, he summoned them *in chains*. From literature he got illustrations, ideas, argu-

ments, phrases, words ; and last, though not least, intellectual enthusiasm.

On all these accounts, therefore, he vehemently recommended the study of letters subordinated to law. The English lawyer, he would say, graduates at the British Universities a scholar, with his head full of polite learning, and his heart full of enthusiasm and the memories of Leonidas and Marathon. But he finds the law is a jealous mistress ; he applies himself to her studies therefore with severely exclusive zeal ; a few years roll on, and he is all law ; his face is dry and his heart dryer. Now is just the time when he should renew and revive those liberal studies of his youth, and refresh and sweeten his mind ; now it will not hurt him to take his head out of his wig and put it into his library. But he does no such thing ;—and there has been but one Lord Erskine.

In another point of view, Mr. Choate was an earnest advocate of letters for the law-student. Our northern and English life, he rightly considered was undemonstrative and formal ; that it tended to check all impulsive enthusiasm in mind and feeling. Our utilitarian practical philosophy of existence, also, with the eternal race and scramble for the dollar in the distance, lowers the tone of the mind ; and, while it cultivates energy, chills enthusiasm, the child of nobler aspirations and sunnier climes. But good literature is full of enthusiasm, and studying it you kindle your own fires. Thus while you expand, you lift up and heat your mind with a generous glow.

The study of Rhetoric of course he would advise. He himself was a thorough master of all the rhetoric there was on earth. He had studied it, not only in the detail and immediate application of style and arrangement, but in its essence and origin ; he traced its precepts back to see their

source in traits of human nature. Aristotle, he said, laid out a chart of Rhetoric, but with his vast mind he went further, and tracked out the principles of the human soul from which it sprung and to which it was applicable. Cicero and Quintilian, in their practical discussions of the art, Mr. Choate knew intimately. And many a creation or an arrangement of thought, many a home thrust of argument in his own actual practice in Court, I am quite sure, owed its origin to their precept, or to his own reflection upon their thinking. For in all times, human nature, and the rules applicable to it are essentially the same ; form varies, but the essence of things is unchanged. Julius Cæsar had the same thoughts in his head when he marched over Gaul, as Napoleon III. when he marched over Italy. Isocrates might set up the scepter of his school of eloquence here in the American Republic instead of in the Greek Republic ; and with only trifling changes establish now a second rhetorical empire. Mr. Choate called Aristotle's an *ethical* rhetoric ; and I remember that he highly praised John Quincy Adams' Lectures on Rhetoric, which were read originally at Harvard, and which treated fully of Aristotle and all the ancient rhetorical authors.

He was in the habit of saying, " In literature you find *ideas*. There one should daily replenish his stock." He laid great stress on the fertility of this source of thoughts.

But it was for language, for phrases and words, that, more than all, he valued books. He found words in books, and he got them into his command by translations from Greek and Latin into English. Two thousand years ago Cicero stocked his vocabulary by the same plan, translating from Greek into Latin ; and in the last age in England, William Pitt was trained for ten years to translate Latin and Greek both into English. Mr. Choate followed this plan.

But chiefly in his translation, he attended to the multiplication of synonyms. For every foreign word he translated, he would rack his brain till he got five or six corresponding English words. This exercise he persevered in daily, even in the midst of the most arduous business. Five minutes a day, if no more, he would seize in the morning for this task. Tacitus was a favorite author for this purpose, and Plautus. Cicero, he said, though noble, could be too easily rendered into a cheap and common English ; “and it is a rich and rare English that one ought to command, who is aiming to control a Jury’s ear.”

His idea of diction was, to get hold of striking and strange expressions which should help him to hold on to the Jury’s fatigued attention. Thus he would always say, “four and twenty hundred”, instead of twenty-four hundred, and vary even the most obvious expression to give it a fresh look. But in every part of study, preparatory and final, he always relied vastly on the *Pen*. That instrument is the corrector of vagueness of thought and of impression ; therefore in translating, in mastering a difficult book, in preparing his arguments, in collecting his evidence, he was always armed with that, to him, potent weapon.

Finally, after all the circle of studies and means of preparation thus outlined, there was still another essential in his mind for the court lawyer ; that was fervor and elocution. Like Henry Clay, like Grattan, like Chatham, like Curran, he trusted to no native gifts of eloquence. He practiced eloquence every day, for forty years, as a critical study. He would take some approved author and utter a page aloud, but not noisily, in his room ; struggling to accomplish two things—to get the whole *feeling* of every sentence, and to express it by his tones even more passionately than the author by his words ; and also he labored to “get

his throat open," as he expressed it ; by which I presume he meant, an effort to get out a pure round tone, without vociferation or clamor. Edmund Burke's works he chiefly recommended for this exercise, as being a cross between Bolingbroke and Pitt.

His example thus is a good lesson to all aspiring youth, who—in a country like ours, more fond of eloquence than any nation since the Athenians—feel ambitious to command the public by earnest discourse. Choate trusted to no inspiration of the moment in his speaking. Every thing that could be prepared, was prepared ; every nerve, every muscle that could be trained, was trained ; every energy that daily practice could strengthen was invigorated. Then and thus, full armed and glorious, he swept like a conqueror across the stage in the scenes of his forensic dramas. So all truly noble orators, in every age, have trusted not to inspiration, but to preparation. The great master, Cicero, when he was President Consul of a republic whose banner was unchallenged beneath the stars, resorted daily to an oratoric school.

It is apparent, therefore, in this great modern Advocate's teaching and example, how grand his scheme of education for the advocate was ; and with what lofty pride he contemplated the profession of which he was so illustrious a member. He had often on his lips the magnificent metaphor of Archbishop Hooker : " Of Law, no less can be said than that her seat is the bosom of God, her voice the harmony of the spheres ; all things in heaven and earth do her reverence ; the greatest as needing her protection, the meanest as not afraid of her power." And he spoke with singular enthusiasm of Bolingbroke's tribute to the Law : " There have been lawyers that were orators, philosophers, historians ; there have been Bacons and Clarendons,

my lord ; there shall be none such any more, till in some better age men learn to prefer fame to pelf, and climb to the vantage ground of general science." I once remarked to him, that the study of law became less dry as it became more intelligible, and that a man might absolutely learn to like it, "Like it," said he ; "there's nothing else to like in all this world."

HIS TREATMENT OF THE BAR.

Having such exalted ideas of the proper preparation and education of a lawyer, and of the profession itself, it would not have been surprising if he had looked down upon his brethren at the Bar—if he had even looked superciliously upon the young, and contemptuously upon the old members of the Bar. Pinkney treated his compeers of his own standing at the bar, with short and curt defiance; and his juniors, he would use and employ rather than honor. In professional consultations, he would drain them of all their knowledge and learning in the case, use it all himself, and pass it off as his own. But Choate seemed to take the greatest pleasure in recognizing and favoring and complimenting the young men of the Bar. His own juniors in a cause, he was careful to show to the jury that he respected. If any associate gave him a hint or a suggestion, or called his attention to a point of evidence, he would instantly avail himself of it, even if he did not deem it important, saying, "My brother reminds me," etc. He thought it no derogation from himself to acknowledge obligation to others. In all his intercourse with young lawyers, in his office and in court, he always elevated their own idea of themselves by his treatment of them. Many a youth who went in to consult with him, with trembling step and doubting heart,

has come out feeling confident and strong, not only in his case, but in himself ; he was so reassured by the great lawyer's seeming respect for him. No senior counsel at the bar, within my recollection, has ever treated young men as he did. Could there have been a meeting at his death of the young generation of the Massachusetts bar, I think his memory would have received a tribute more tearful and true hearted than was ever given to the name or the fame of any other American lawyer. Many a young heart that had never met him except professionally, was shrouded in gloom at the news of his death ; and many a young man will hang up his portrait in his office or his chamber, and gaze daily upon it, for the sake no less of his inspiring than his affectionate memories of the great forensic soldier.

But to his peers in years at the Bar, Mr. Choate was uniformly decorous and appreciative. He never made them feel small in their own eyes, although they must often have looked so in his. He persuaded them all that he thought them good lawyers ; and some of them I know he did think great lawyers. He could see real merit in others, as quickly even as they could in themselves. And he was prompt and ready to admit it. The only lawyer at the Suffolk Bar to whom he did not do full justice, was—Rufus Choate.

He regarded the profession of the law as not only noble in itself, but as ennobling all who were counted in its ranks.

Every one who wore the Advocate's robe and carried the *green* bag, was respectable in his eyes. They all were of the number of those, as he was wont to say, "who administer the laws;" or to use another phrase of his, "those who are concerned in the administration of this vast and complicated system of our law." The office of Judge, whether superior or inferior, was, in his mind, a high magistracy.

He contributed to make many Judges. But he treated

young Judges whose ermine his word of request had laid upon their shoulders, as respectfully as he treated the national ermine of the United States Judiciary, or the venerable and awful head of the chief Judicial Magistrate of Massachusetts.

HIS CASES.

It was a part of this true idea of the Law, as a dignity in itself, independent of the particular issue involved, that he never made any distinction in accepting cases. He took every case that came. First come, first served, was his motto. Whether this man would pay, and that man would not pay ; whether this case would offer a good field for display, and that one was before an insignificant tribunal—these considerations never seemed to enter his mind. When reigning at the summit of his fame, I have known him take a little ten dollar case in a Police Court ; and although when it came on, the pressure of great cases in which he was previously retained, forced him to send it to a subaltern, yet at the time he fully intended himself to try it. Indeed, he spent a precious hour talking it over with the client ; a poor person who had never before in his life spoken with so great a man.

I remember a little case where an Irishman sued a countryman of his, for slander, in calling him, by way merely of angry vituperation, “a murderer.” Mr. Choate took the case, and actually gave some consulting advice about it, and was intending to argue it. It was certified up from a lower Court to the Supreme Court, by a provision in our Statutes, as the Plaintiff laid his damages high. Before the trial Mr. Choate found it would be impossible to try it. It was sent to a young lawyer, and when it came

on, the Judge who was holding the term stormed and ridiculed the idea of such a case being brought before his Court at all. Being there, however, it had to be tried ; the Judge, to use an expression of the Bar, "charged like thunder" for the Defendant, and the Jury promptly returned a verdict for the Defendant, *with costs*. So the Plaintiff had to pocket his title of "murderer," and pay costs for his silly charge.

As Mr. Choate was careless what cases he took, so, also, he was utterly reckless how much energy, and learning, and time he gave to them. He would go before a Master in Chancery, a Referee, a Legislative Commissioner, or Justice of Peace in a little back office, with the same glorious ardor, and the same complete and glittering preparation, as if he was to stand before Judge Story, or Chief Justice Shaw.

A leading member of the Boston Bar who had been side by side with him for many years, said to me in a recent conversation, that the finest performance he ever heard from Mr. Choate was in the little back office of a County Judge of Probate.

There are some counselors who attain great success by carefully selecting from their large practice, those cases only for actual trial, which are so strong on their facts as to be likely to be won by advocacy. All their other cases they compromise or settle out of court ; but Mr. Choate never settled a case in his life from any such motive. In his prime, it was his pride to take every thing, and beat every thing ; and he rarely lost a verdict.

About ten years ago there was a criminal cause in the United States District Court, in which the captain of a vessel was prosecuted for casting away his ship. The insurance companies, to whom it was of vital interest that

he should be condemned, to exonerate them from the insurance, sent a special messenger to reconnoiter the West Indies, the scene of the disaster, and to procure evidence. The messenger was himself an able and accurate lawyer. He chose his own witnesses; and on the voyage home he had ample leisure to confer with them, and deepen their own impression of what they had seen, and what they were to say. Upon their arrival, Choate became aware substantially of what they would testify to. In conversing with him about it he said, "The captain's case looks ugly, but I shall go on with it, and I think I shall clear him." The trial lasted many days. He spoke three days himself. The result was—the skipper was acquitted. Here the government picked their own witnesses; and their agent told me, on his arrival at home, that he had collected evidence which would settle the case beyond all question. Unfortunately for him he did not know Rufus Choate.

All these professional traits—his indiscriminate advocacy, his uniform ardor, his Napoleonic defiance of difficulties—would be fully testified to by any member of the bar who knew him well. In a speech before the Massachusetts Historical Society, of which Mr. Choate was a member, Mr. P. W. Chandler, who had been long in practice at the same tribunals with him, bore testimony to all these qualities very fully, and very happily, in these words:

"Mr. Choate's greatness as a lawyer, apart from his remarkable natural powers, must be attributed to his intense love for, and his enthusiastic devotion to its duties, and to an almost utter self-abnegation while engaged in the practice of his avocation. His power of application was most extraordinary. He was so pressed and absorbed by professional engagements that it was often difficult to consult him at any length; and in the preliminary prepa-

tions of a cause he did not manifest the zeal and enthusiasm that might be expected. Indeed there was sometimes a feeling that he took little or no interest in the success of his client. But when the trial was fairly commenced, his whole energies, all of his powers, were completely absorbed. To those who have never been associated with him it is impossible to convey any adequate idea of his entire devotion to the cause on trial. Nothing escaped his attention. He never confessed defeat, he never lost heart, he never was discouraged; and at every adverse turn in the evidence, at every discouraging ruling of the judge, his energies seemed to rise to meet the new emergency; and the fertility of his resources was wonderful.

“Nor in his arduous labors did he seem to be influenced by the ordinary selfish considerations of other men. Most of our race are looking forward to some especial and prospective benefit as a reward for present exertions. The desire of wealth, the love of power, official position, an old age of ease, the ‘Sabine farm’ in the distance; these not seldom appear with considerable distinctness, but not with him. He appeared to labor for the love of it. He found his reward in doing the work which was set before him.

“The magnitude of the cause, or the character of the tribunal, seemed to make no difference. Whenever and wherever he appeared, whether in the highest tribunal of the land or before the humblest magistrate known to the law, there was sure to be a hard struggle. I have known him contest a trifling matter before a Master in Chancery for several weeks where the compensation must have been entirely inadequate. The ablest argument I ever heard him make, and perhaps the ablest it was ever my fortune to hear, was before a single judge at chambers, with no audience, not even the presence of his own client. The

amount involved was comparatively small, but the *question* interested his mind. He had given it a most patient, and careful, and thorough investigation ; and for many hours he discussed it with all the vigor he could bring to bear, with a brilliancy of rhetorical power truly wonderful, and with an array of all the learning which could by any possibility aid him in the case.

“ ‘How is it possible,’ some one exclaimed, ‘that a man of his age, after so many years of practice, and in the midst of such labor, can bring so much zeal, enthusiasm, and power to bear under circumstances like these—no audience, no applause, no client, a single judge, and a private room?’ ‘*It is blood,*’ was the reply, ‘and nothing else. He can no more help it than the race-horse brought upon the course can help exerting his whole powers for victory.’ This is partly true undoubtedly. There was ‘blood’—the complete mental organization—the nervous energy, the remarkable temperament ; but there was also the long and careful training, the days and nights of toil to this result, and the inflexible principle, worked into the soul by this systematic drill, to do every thing in the best manner at all times, and to be equal to every occasion. He had drawn in the spirit of the great masters of the law enough to know and to feel that in undertaking any man’s cause, his client was entitled to his best energies, his whole powers, and all the zeal he could bring to bear upon the matter in controversy.”

HIS MORALE OF ADVOCACY.

The question how far a lawyer may go for his client and for victory in a cause, has often been mooted. It is doubtless true, that every man and every cause has a right to the benefit of the laws of the land ; has a right to be defended

according to the laws ; and unless he can be put in jeopardy in strict accordance with the principles of evidence and of law, he ought not to be jeopardized or harmed, no matter what his seeming guilt may be. Hence the most universally acknowledged reprobate has a right to a defense. When a prisoner accused of murder has, in the course of a trial, after "putting himself upon the country," subsequently risen in his box, and, notwithstanding his plea of "not guilty," confessed his guilt, the court has frequently refused to receive his acknowledgment, and ordered the trial to proceed. They held that he must now be tried by law, and so convicted, or else set free. Therefore, the idea is a false one that when a party confesses himself in the wrong, the lawyer is to abandon the cause. A counsel ought not to think any thing about, or know any thing about, whether his client is right or not ; he only ought to think *what can legitimately, legally be said for him*—what, according to the accepted principles of our law, is the *legal* defense. If from the powerful presentation of that defense, the guilty defendant goes scot free, the fault is not the lawyer's ; but if through his scrupulousness even the guilty is convicted without really a competency of legal evidence to prove his guilt, the lawyer is almost as much guilty as if the innocent were convicted.

Our system of law practice is based upon the idea that upon the whole, in the long run, more guilt will be punished, and more innocence saved, by the efforts of counsel pulling in opposite directions with all their might, keeping themselves within the rules of legal evidence and legal argumentation ; for it must be borne in mind that no one on earth knows certainly which is the guilty and which is the innocent ; even confession of guilt does not prove guilt. Many instances are recorded when, from weakness and from

various motives, men have said they were guilty, when subsequent events have shown they were not so ; and, therefore, till the judgment day of all flesh shall separate the sinner from the saint, the system of our Anglo-Saxon law is the best system for attaining a high average of correctness in the adjudication of rights and wrongs.

Indeed, there are cases reported in the books where the attorney has *been sued* for abandoning his cause, when the evidence came out black and hopeless, or the defendant confessed in his private ear his complicity in the crime ; and in these reported cases the attorney has been himself adjudged *guilty of neglect*, and mulcted in damages.

Lord Brougham once entered upon a discussion of this subject ; he went as far as it is possible to go in support of the doctrine of the utter identification of the counsel with the client's legal interest.

Perhaps, while assenting to the general doctrine, there may yet be some degrees in one's absolute acquiescence in it practically ; but it is extremely difficult to draw the line.

Mr. Choate accepted and acted in the doctrine with no qualification whatever ; he carried it practically as far as Lord Brougham, and carried it to the extremest verge of honor ; yet he was scrupulously careful not to do any thing which would be false to his attorney's oath, taken when he entered the bar, to be true to the court as well as the client. He was also true and fair to his opposite counsel ; he never, during the period of my observation of him, took any advantage of doubtful character ; no mean and treacherous ambushade, no surprises, no pitfalls masked with reassuring flatteries ; he fought hard, but he fought fairly ; he conceded to his adversaries nothing that he ought not to concede, but he conceded every thing up to that line.

As he never got angry, so he never, from pettishness, bore down on an antagonist with unusual severity, or from mere spite tried his cause with gratuitous sharpness and disposition to worry ; and he never pettifogged ; but he took every just and proper advantage ; he never yielded an inch of real standing ground ; he never gave up ; he fought his cause through every court into which it could be carried or driven ; and he went for victory to the last beat of the pulse and the last roll of the drum.

Many lawyers make a gallant struggle in a cause when it is first up ; but if after verdict it is again to be contested, on dilatory motions, or in a new trial, they lose their interest and dispute it languidly. Mr. Choate could not bear to try a cause over twice ; it lost its novelty, its picturesqueness to him, and became stale ; but, nevertheless, he went into the battle of its repetition with the same gallant and defiant steadiness ; the same labor, the same zeal. He had the feeling of the true soldier, without fear and without reproach—he must win or die ; that case was his Malakoff, it must be taken.

No matter how sick he was, if he could not get indulgence from the court, he must battle on in the case ; no matter how many considerations might be suggested of the formidable antagonism of facts or of counsel, of the insignificance of his client's interest, or the feebleness of his cause, that Malakoff must come down ; and before its walls, he would rally every pulsation of his power to the extremest energy of his whole being.

How gallant it was to see him standing in a disputed cause before some judge of mind enough to comprehend him ; and see him turning from judge to jury, and from jury to judge, struggling and battling to do away with or to qualify the deadly ruling ; to see him agonizing, as it

were, before the judgment seat ; standing up there with all his powers in action, the perspiration of his energy absolutely raining from his curling locks, the great veins in his temples standing out like the veins of a mettled blood-horse on his race-ground, the glorious flash of his eye burning on the intent judge, his head expanding with a thousand thoughts, and charging on the jury with the whole magnetic battery of all his tones, his thunder, and his smiles !

And, though the case grew even blacker and more desperate under the decisions of the judge, he never wavered. I have seen the court rule him down, his statement of evidence directly contradicted by his adversary appealing to the minutes of the Bench, the judge check him in mid career with the declaration that he was "all wrong," but the daring advocate was not at all discomfited ; instantly, as the laugh of the crowd and even of the jury rose, he would plunge away into some other portion of the discussion of the case, distract the minds he could not conquer, cover up his momentary defeat with an electric burst of humor, setting the court room, judge and all, in a roar, and rush on in his argument ; going for a disagreement of the jury, at any rate, and another trial, with one more chance for victory.

In the same address of Mr. Chandler to which a reference has been made, he discusses the morale of this chivalric devotion of Mr. Choate to his cause, with the practical wisdom which we should expect from a lawyer of so much experience, and, at the same time, so much genuine principle. He says :

"It is not improbable that this earnest performance of duty may have been the occasion of grave misconstruction on the part of a portion of the public, in relation to his principles of action. People outside of our tribunals of

justice, and, not seldom, spectators themselves, are very apt to dictate the course which a lawyer ought to pursue, and openly express their indignation when his efforts run counter to their own prejudices and prepossessions ; and their indignation knows no bounds when the final result does not accord with their own judgments.

“The necessity of the legal profession to the machinery of the social fabric in a free State is undeniable, and all history shows that popular liberty is best preserved, advanced and defended, where the legal profession is most unrestricted and free. There is, and there has been, no free profession in a despotism. When a celebrated Emperor of Russia was in England, he expressed the utmost astonishment at the consideration in which the legal profession was there held. He declared that there never was but one lawyer in his dominions, and he had caused him to be hung. And well he might, for such a man would be much in the way of the arbitrary proceedings in a despotic country. And even in free and enlightened governments, the popular excitement against private individuals, who happen to incur popular odium, is a dangerous element, which requires some check in the machinery of society itself, or great wrongs will often be done. When popular excitement is at the highest point—when popular clamor is loudest, and a victim is absolutely demanded, and seems necessary for peace, it is no small safety for every member of the community to have a class of men educated and trained for the purpose of defending those who can not defend themselves, to step forth as the advocate, if not the friend, of those who are hunted by popular clamor, to give their time, their talents, their learning and their skill in defense of those whom all others desert—to breast the fury of the people—to stem the popular current—and to insist upon a full, fair and

impartial investigation before the victim is offered up. And when we reflect that men have been convicted and have suffered the extreme penalty of the law, whose innocence was afterwards made manifest to the world ; that men have sometimes *confessed* themselves guilty of crimes of which they were entirely innocent, we shall see more clearly the need of a legal profession, and shall be more cautious of condemning those who enter into their duties with zeal and energy and enthusiasm—who mean to do their whole duty irrespective of the applause or clamor of the public while laboring under temporary excitement.”

This view of a lawyer's duties is the true view, and yet, at Boston dinner tables, I have heard Mr. Choate called “a grand engine of social oppression.”

When you brought your case to him he heard you with paternal gentleness and encouragement. But the duty of his junior counsel was not done when he had simply retained Choate. He must *watch him*. Until the cause was actually opened in Court, he was a most uncertain ally. Whoever would be sure of his services must follow him up and hold on to him, remind him perpetually, and when the cause was reached almost seize and take him bodily into Court. Once there, in his chair, and the case begun, there was no more danger.

Choate had heard the opening, his mind was now on the facts ; and, like the tiger who has tasted blood, he must pursue the game. But prior to that such was the multiplicity of his engagements, he was in so many cases at the same time, in so many Courts, and moreover he was at liable to be sick with violent headaches, that unless you were very assiduous, your great champion would slip through your fingers. When, however, you had once sat

down by him at the table, before the faces of the Jury, all was safe.

After the cause was opened and as it progressed, particularly if it was a long case, Choate seemed to become utterly lost in it. He thought of nothing and felt for nothing but his client. He acted just as that client himself would have acted had he suddenly been gifted with the gifts of law and of tongues. From that moment, the client's interest was Choate's religion.

He was never a respecter of persons, except of truly great persons. The accidental distinctions of American society he thought nothing of. The shabby charlatanry of aristocracy in a democratic republic, he scouted at. The maxims of self-interest also, pecuniary or general, were a sealed book to him ; and hence his client, whoever he was, was sure to have the whole of him and the best of him, whatever interest or person was arrayed in the hostile ranks. Whoever or whatever stood in the way of *his* success, whether high or low, rich or poor, must go down. It would go down with no unnecessary flourish of trumpets, no bullying, no violence, no insult,—but it must go down.

He has often told me, that when actually in a case a lawyer should surrender all his mind to it. "Do not read," he would say, "even in the evening or the intermission ; think of the case, dream of the case incessantly till it is over. And always," he would add, "proceed upon the capital rule to do your very best on every occasion."

His demeanor and bearing in the court room, was very interesting. It was a model of gentlemanly deference. He took his seat in the most modest, unassuming way. Indeed he never did any thing which had the appearance, to use the vulgar phrase, of "making a spread." If, as sometimes happened, the opposite counsel was a young man, the

manner of the youth would generally indicate that he was the greater man of the two. Even when the evidence was in and Mr. Choate came into Court, on the morning of the argument, pressing his way through the thronged Bar and the crowded aisles, he came with no bold warranty of supremacy and success in his manner. He would slide deferentially into his chair, sling off several of his innumerable coats, pile up his papers before him, rub his hands through his tangled hair, push his little table slightly away, rise and say something to the Judge, which seemed the beginning of a low conversation, but which you afterwards discovered was a "May it please your Honor," then turn to the Jury with a trite remark or two—the intent crowd would settle a little—and then in a few sentences more, ere anybody was aware of it, he would be sailing up into the heaven of pathetic adjuration, and bearing you along with him; like a stately balloon swinging steadily upwards, far away in the air.

During the whole trial his "action" was a study. In his later years, he rarely knew much about a cause till he got into Court. But after the opening by his junior, and hearing the other side, he seemed to grasp it as by intuition. He gave great attention to all the opening preliminaries. He did not chat with those surrounding him, nor did his eyes wander. Hardly were the preliminaries finished when he seemed to have taken in the whole case. Such had been his immense experience that I suppose he had a parallel in his memory for almost every case, and could see the end from the beginning, just as great and experienced soldiers will see the future inevitable combinations of a battle from the opening tactics; for let any interlocutory point, in discussing evidence or the character of the case, arise, even very near the beginning; and Mr.

Choate would follow his junior in its discussion with a step as steady, and a theory as true, as if he had been consulting upon it for a week.

He took constant and copious notes, in an indescribable and incomprehensible hand. He would write on, up to the very last moment before rising to address the jury. It has been said that he wrote sheets of manuscript enough to stretch in straight line across the Atlantic Ocean. What all this was which he wrote nobody ever fully knew. Much of it was evidence, much of it also, I suspect, was rhetoric and incidental observations. It always seemed to me that he cultivated his blind hand to mask what he did write. When he came to address the jury, two thirds of his argument apparently would be written ; and this, with other circumstances, always led me to think that he actually began his speech to the jury, in his head and on his paper, upon the very first page of his notes, as the evidence was going in. Certainly, in most of his cases, he had no time after the evidence was in to prepare such copious writings as those which he spoke from.

Every night during a trial he took home his notes, collated, digested, and rearranged them with reference to the final argument. He could do this ; but any less experienced mind would many times have gone astray in the attempt. But from the lips of the first witness, he saw the prophecy of his argument.

He was critically careful to have every word down on paper which was uttered in evidence ; and if he was called out of Court at any time for a few moments, he would compliment some young member of the Bar or student who happened to be near him, by placing him in his seat to continue the notes of the evidence while he was gone.

In a great patent case, in which Daniel Webster was

opposed to him, he opened his speech to the jury by saying: "Gentlemen of the jury, I have no fear for my cause on its merits, but (glancing around at Webster) I do fear transcendent ability, exerted with triumphant confidence." Webster smiled grimly; and when, after two hours of talking, the Court took a recess of a few minutes, and Choate went out, the great Daniel quietly took up some pages of the extraordinary writing of the opening of Choate's argument, tore it up deliberately, and handed it round to the delighted ladies, who encircled the arena of the two heroes' contests in one long crescent of beauty.

HIS MAGNETISM AND KNOWLEDGE OF A JURY.

Mr. Choate's appeal to the jury began long before his final argument; it began when he first took his seat before them and looked into their eyes. He generally contrived to get his position as near to them as was convenient; if possible having his table close to the bar, in front of their seats, and separated from them only by a narrow space for passage. Then he looked over them and began to study them. Long before the evidence was in, either by observation or inquiry, he had learned the quality of every one of them. It is said that a considerable portion of Mr. Webster's closing appeal in the great Salem Knapp case was intended especially for one juror of a very conscientious character. Many and many a time Mr. Choate directed solid masses of his oratoric artillery upon the heart or head of a peculiar juryman, whose individuality he had learned during the trial. I saw him once in an argument walk straight up to a juryman, and say, "Sir, I address myself to you. I will convince you now, if you will give me your attention;" and then he proceeded to launch upon him a fiery storm of

logical thunderbolts to conquer or paralyze what he saw was his deadly hostility. Frequently, when he was in a case, he has said to me, "That juryman in front," or "that one on the back seat, are the only ones I fear. The foreman, thank God, is all right." Or again he would say: "Do you see that somber looking individual in the middle? *His private history* makes him loth to believe us;" or, "That man there thinks he knows so much, he's determined to have it all his own way." Thus he daguerreo-typed their individual characters on his mind before he spoke to them.

But he not only observed them to find them out, he watched them to impress them. No chance was lost in the progress of the case for this object; no opportunity for raising a quiet smile or a loud laugh; for interjecting some propitiatory remarks; for showing the superiority of his own good nature over his adversary; for saying something grateful to men generally, so that the jury could hear it; or even tickling them by some home thrust carelessly thrown out.

It used to be said of Henry Clay, in the United States Senate, that he was a magnificent actor; certainly, it might be said of Mr. Choate that he was in Court a consummate actor. It always seemed to a close observer as if he did every thing for effect upon the jury, from the reading of the writ to the last word of the argument. There he sat, calm, contemplative; in the midst of occasional noise and confusion solemnly unruffled; always making some little headway either with the jury, the court, or the witness; never doing a single thing which could by possibility lose him favor, ever doing some little thing to win it; smiling benignantlly upon the counsel when a good thing was said; smiling sympathizingly upon the jury when any juryman laughed or made an inquiry; wooing

them all the time with his magnetic glances, as a lover might woo his mistress; and seeming to preside over the whole scene with an air of easy superiority; exercising from the very first moment an undefinable sway and influence upon the minds of all before and around him.

His humor and wit helped him in every stage of the cause. It relieved the tired attention, and often would kindle up such a sympathetic conflagration of glee all over the court room, that the dry case seemed to take a new start from that moment, and the lawyers looked up as if they had taken in a sudden draft of fresh air. His humor was most distinguished for its odd association of very opposite ideas, and ideas naturally very distant from each other. Many of his great and sudden mirthful effects were produced by his tone and manner, quite as much as by his words. He would utter them so quietly, masking them by a very deliberate and solemn utterance of the whole sentence, till suddenly the point broke out. A counsel in a patent cause interrupted him with the declaration, "There's nothing original in your patent; your client did not come at it *naturally*." Choate looked at him one instant with mirthful scorn. "What does my brother mean by *naturally*?" said he. "Naturally! we don't do any thing *naturally*. Why, *naturally*, a man would walk down Washington street with his pantaloons off!" The oddity of the idea, no less than the force of the argument involved, combined with the slightly sarcastic jocoseness of the manner, to make the joke irresistible, and every human being in the court room laughed immoderately. Even the grave United States judge—for it was in the District Court—absolutely rolled on his seat with laughter. In seeking to keep out the evidence of a certain witness in another case, Mr. Choate said, "This witness' statement

is no more like the truth than a pebble is like a star ;” then he paused, the queerness of the comparison provoked a smile, but on he went with his peculiar intonation, “ or a witch’s broom-stick is like a banner-stick.” This sudden climax of comparison, as might be expected, produced great shouting.

In a railroad accident case, where they ran over a carriage at a crossing, he was showing that the company could not have had any look-out. “ They say,” he exclaimed, “ the engine-driver was the look-out. The engine-driver the look-out ! Why what was he doing at this moment of transcendent interest ?” (the moment of passing the cross-road.) “ What was the look-out doing ? Oiling his pumps, they say—*oiling his pumps*, gentlemen of the jury ! a thing he had no more business to be doing than he had *to be writing an epic poem of twenty-four lines*.” The association of ideas here between the oily engine man and the creation of an epic poem, was one of the most extraordinary ever uttered ; but its effect was decisive.

All along the case, like the electric spark upon the wire, his humor and sportiveness sparkled and shone ; cheering and irradiating the dull and tedious stages of the day’s investigation. If, as was sometimes, though rarely the case, he left the cause with his juniors for half a day, what a contrast, to those who had been spectators of the whole, there was in the life and movement of the scene ! How every thing seemed to drag, the judge to grow drowsy, the jury to become discontented ! It was like the stage after the star goes off ; or the heavens when the stars go out. But let *him* come rolling and muttering into Court, invested in the panoply of all his coats, and how quickly all was life and interest again !

His courage in a cause was indomitable. No disaster,

no breaking down of a witness, no unexpected ruling of the Court "took his courage out of him." He never thought any case lost, till "judgment" had been entered, and a "motion to review" the judgment denied. And he not only struggled to the last, but he struggled bravely; with high hope, and cheering all with confidence. He tried a weak cause, I think, better than a strong one. The worse the cause was, the stronger he was; a very safe cause he did not seem to know accurately what to do with. The richness of his evidence embarrassed him. He was accustomed to maneuver a few troops, and concentrate them on many points of the adverse line, with masterly intellectual strategy; but with an army bigger than the enemy, he actually did not know what to do. In this respect he was very different from Webster. Webster was not very formidable in a weak case. But if it was strong, he was invincible; no man could take his verdict from him. Choate, however, seemed strongest when literally he almost created his case.

Mr. Choate's manner to the opposite counsel was always conciliatory, never supercilious. If the counsel was young, his manner to him was gentle and paternal. Sometimes a brazen-faced lawyer, who had won an equivocal position by his very roughness and impudence, would try the game of brusqueness and bullying with him; supposing from his suavity and dignity that something could be gained by vulgar audacity. But Mr. Choate had ways of dealing with men, known only to himself. He would put such a man down very early in the case, and do it so mildly and neatly, that the victim would hardly know what hurt him. He would feel that the laugh was against him, but could hardly tell why. In bandying words and in repartee, Choate was unrivaled. His prompt wit was never so scintillating as when it flashed out of the dark cloud which

gathered over his case from some damaging remarks of his adversary, or gloomy testimony of a witness. His repartees, too, were always made with an air of regretful necessity ; not as if he said them for victory or for resentment. This added exceedingly to their effect. They seemed so very *honest*.

His manner to the judge was always in the highest degree deferential. It was almost filial. He had a feeling of poetic veneration for the judge, as the titular sovereign of that forensic scene which was the theater of his love as well as of his labors. How splendid a character, and how august a figure was his ideal of the judge, appears in the word-picture of such a magistrate, which he drew in his great speech in the Massachusetts Convention against an elective judiciary. He said every judge should have something of the venerable and illustrious attach to his character and function in the feelings of men ; and he went on to observe : "The good judge should be profoundly learned in all the learning of the law, and he must know how to use that learning. Will any one stand up here to deny this ? In this day, boastful, glorious for its advancing popular, professional, scientific, and all education, will any one disgrace himself by doubting the necessity of deep and continued studies, and various and thorough attainments, to the bench ? He is to know not merely the law which you make and the legislature makes, not constitutional and statute law alone, but that other, ampler, that boundless jurisprudence, the common law, which the successive generations of the State have silently built up ; that old code of freedom which we brought with us in the Mayflower and Arabella, but which in the progress of centuries we have ameliorated and enriched and adapted wisely to the necessities of a busy, prosperous and wealthy commu-

nity,—that he must know. And where to find it? In volumes which you must count by hundreds, by thousands; filling libraries; exacting long labors; the labors of a lifetime, abstracted from business, from politics; but assisted by taking part in an active judicial administration; such labors as produced the wisdom and won the fame of Parsons, and Marshall, and Kent, and Story, and Holt, and Mansfield. If your system of appointment and tenure does not present a motive, a help for such labors and such learning; if it discourages, if it disparages them, in so far it is a failure.

“In the next place, he must be a man, not merely upright, not merely honest and well-intentioned—this of course—but a man who will not respect persons in judgment. And does not every one here agree to this also? Dismissing, for a moment, all theories about the mode of appointing him, or the time for which he shall hold office, sure I am, we all demand, that as far as human virtue, assisted by the best contrivances of human wisdom, can attain to it, he shall not respect persons in judgment. He shall know nothing about the parties, every thing about the case. He shall do every thing for justice, nothing for himself, nothing for his friend, nothing for his patron, nothing for his sovereign. If on the one side is the executive power, and the legislature, and the people—the sources of his honors, the givers of his daily bread—and on the other, an individual nameless and odious, his eye is to see neither great nor small; attending only to the ‘trepidations of the balance.’ If a law is passed by a unanimous legislature, clamored for by the general voice of the public, and a cause is before him on it in which the whole community is on one side and an individual nameless or odious on the other, and he believes it to be against the Constitution, he must so de-

clare it, or there is no judge. If Athens comes there to demand that the cup of hemlock be put to the lips of the wisest of men, and he believes that he has not *corrupted the youth, nor omitted to worship the gods of the city, nor introduced new divinities of his own*, he must deliver him, though the thunder light on the unterrified brow."

Although of course in all his lifetime he confronted but few judges who were equal to his noble ideal, yet he always treated the office, the magistracy, as if the incumbent were fully up to it, intellectually and morally. Sometimes when he got out of Court, after he had been exhibiting treasures of thought and throes of energy before a judge who sat, armed in immobility, unmoved by thought, law, or passion, he has said to me, in his hot wrath, "That judge is an old woman—he's an old fool—he can't put two ideas together—he ain't fair—he's ugly as the devil!" But when his momentary heat passed off he would be the first to acknowledge that perhaps the judge was right, after all; "and, at any rate," he would say, "I know he means to be right." And I remember to have heard him speak in terms of the highest encomium of one judge, now living, against whom he often, in a storm of disappointment at his unshaken rulings, volleyed forth much conversational thunder.

Even a Sheriff, when he was addressing a sheriff's jury, he regarded as a delegated minister of the law, and clothed temporarily with its ermine and insignia. He showed this on one such occasion when the adverse lawyer, twenty years younger than himself, treated the sheriff with a flippancy and disrespect which moved Mr. Choate's disapprobation. There the lawyer sat, sprawling about over his chair, addressing the presiding sheriff with great familiarity, and *never rising* out of his seat. At length it came Mr.

Choate's turn to say something upon an interlocutory point of evidence. Slowly and decidedly he rose up, stood an instant, and then commencing, said: "I *rise*, Mr. Chairman (for I always stand in publicly addressing the sheriff of my county), to say before you upon this matter," etc. He did not look at the opposite counsel, but every one felt the application, and there was a general buzz of approval. After that, which ever way the other lawyer did, there was laughter. If he got up in speaking to the chairman-sheriff, they laughed, because he seemed shamed into it; if he sat down, they laughed, because they knew he must be ashamed of it.

To the jury, Mr. Choate's manner was that of a *friend*, a friend solicitous to help them through their tedious investigation; never that of an expert combatant, intent on victory, and looking upon them as only instruments for its attainment.

Every thing he did in Court, in manner and in word, was done very quickly. Yet, paradoxical as it may seem, it was done with an air of great deliberation. It *was* quick, it *seemed* slow. If he rose to discuss an interlocutory point of evidence or practice, he got up half way and commenced, "May it please your Honor,"—then he seemed to drag the rest of his length after him up into a perpendicular, and advanced some sentences before he fully straightened up. Of course this was not always, but often the case. Sometimes, though rarely, he would seem to champ and foam as he rolled about in his seat, impatient to reply to a severe antagonist who was trying to keep out one of his witnesses; but usually he *struggled* up from his chair, commenced in a most casual sort of way, as if he knew he was right, but it was of very little consequence; the loss would be theirs, not his. Soon the sen-

tences would multiply, the blood mount, the contentious appetite warm by what it fed on ; and before he sat down he would often make one of his best short speeches—a full speech in miniature. Many of these were very fine and commanding, not only for their law and their logic, but their genius. In these short parades of his eloquence one would be most struck with the precision and neatness of his statement, the graphic character of his pictures, the telling point of his illustration—a metaphor sometimes so pat to the purpose that it would strike conviction like a shock to your thoughts—and two or three little closing, compact sentences, which would sum up the whole argument about the controverted point, sending it home in solid volley. In these encounters of small arms, the agility and muscle of his intellect were perhaps better seen than in the encounter of large arms in the great argument of hours.

His speech to Evidence, either in its support or struggling to exclude it, was one of his grand powers. He had such a store-house of analogies in his mind, that he could work over and work over a proposition of evidence, until he brought it under an acknowledged principle of law, or, on the other hand, removed it far from any acknowledged principle of law. At Nisi Prius it was almost impossible for a judge to detect the fallacy which often lurks in these arguments for the competency of evidence, so subtle was the craft of their invention, so plausible the cunning of their arrangement, and so sympathetic was the ardor with which he presented them.

It sometimes happened, especially in Patent causes, that he did not think it safe to show his hand early in the case, by saying frankly what precise points his client rested on. When this was so, it was very interesting to see how

adroitly and skillfully he eluded or resisted the efforts of the counsel, and even the Court, to compel him to a disclosure. In a very important patent cause which was upon trial before a judge of great ability and shrewdness, the Court asked him at the recess at the close of the first morning, "to state a little more fully what principles he relied on in his patent." "Oh, certainly," he unhesitatingly replied. "I was about to do that this afternoon, but I will very cheerfully anticipate it;" and then putting on his most blind and solemn face, he rushed into a very fluent, elaborate, and *apparently* intelligible description of the desired point. When, however, this had proceeded some time, the keen judge, who saw that he was not getting any light, interrupted him just at the conclusion of one sentence, "There, Mr. Choate, just there! Now, will you tell me just there exactly what you mean by that language?" "Undoubtedly, your honor," and he did state a little more clearly what he seemed to desire, but immediately after stated it again a little more vaguely; and, in fine, though interrupted several times, contrived to talk half an hour in such a way, that it could not be said at all that he refused the information, nor, on the other hand, could it be said that he gave the least ray of the much-longed-for light. At last, the judge leaned back in his seat, exhausted with his keenly-attentive effort to follow and catch Choate in the nimbleness of this intellectual sally; and suffered him to close unmolested with any further inquiry. As Mr. Choate gathered his papers into his green bag and went out, I remarked to him, "Judge ——— does not seem to have got much light yet." "No," with a shrug and a wink, said he; "it will be a good while before he does, I rather think." The truth was, in the critical posture of the case, it would have been extremely dangerous for his

client, to define at the outset precisely where he would rest. He wanted to draw the fire of the other side first.

This case was hotly contested, but at last, when Choate thought the time had come, he *showed his hand*, and got a verdict.

He sat in court during a trial, apparently wholly unconscious that he was the cynosure of all eyes ; that the crowd inside as well as outside of the bar were staring at his raven locks, the eagle luster of his look, as he would run his big white hands, both at a time, up and down and over the black curls on his head, vexed in thought ; the numerous coats piled over his chair and piled on to his back ; and the erect firm figure he presented when he straightened himself up to say any thing with emphasis to court or jury. Except by his head thus laureled with curls,—from which, by every token, intellect looked—his marked physiognomy, and the homage paid him by all around him, no one would suppose that that was the Magnus Apollo, the King of the drama, to whom all the rest of the performers were subordinates and supernumeraries. He himself never thought of it. He was always absorbed with the world within ; never, except when in his battle, with the world without. When not in action, he sat pensive and profound ; incessantly he rubbed his close curling locks when not writing or speaking, and tossed his hair up from behind on his head, with a short, quick, impatient jerk, as if thought was stirring and tumultuous within for ever. Occasionally, if he perceived any thing “jolly,” as he phrased it, especially if the Court condescended to say any thing mirthful, he would lean back and throw his head round upon the bar, with a sweeping glance and an electric smile which would make the whole semicircle of lawyers feel momentarily cheerful.

His smile was a peculiar one. It was a thoughtful, but a beautiful smile. It always seemed to me a very efficient instrument of his fascination. It did not seem so hearty as it was rich and fascinating. Coming out, as it did, upon a face so wan and dark, its effect was luminous. But it was not a soul-felt smile ; it was an intellectual smile. His dark, sad eyes did not laugh ; his waving lips alone spoke mirth ; and the expression of glee did not last a moment on his features—it glittered, and was gone.

His generalship of a case throughout was Napoleonic. He was as careful as Bonaparte to leave no point unguarded, and to pass over nothing which might by possibility be turned to service. He never committed the blunder of despising his enemy ; but always fought on the plan of supposing the adversary to be about to display all the possible power of his side. He never believed himself victorious, till he was victorious. Until the last moment he fought hard and guardedly, with both prudence and power.

His examination of witnesses-in-chief was admirable. He drew out a narrative of humble facts, in such a way that they lay out before the mind's eye like history written by master pens.

But his cross-examination was a model. As was said, in speaking of his conversations, he never assaulted a witness as if determined to brow-beat him. He commented to me once on the cross-examinations of a certain eminent counselor at our Bar with decided disapprobation. Said he, "This man goes at a witness in such a way that he inevitably gets the jury all on the side of the witness. I do not," he added, "think that is a good plan." His own plan was far more wary, intelligent, and circumspect. He had a profound knowledge of human nature, of the springs

of human action, of the thoughts of human hearts. To get at these and make them patent to the jury, he would ask only a few telling questions—a very few questions, but generally every one of them was fired point blank, and hit the mark. He has told me, “Never cross-examine any more than is absolutely necessary. If you don’t break your witness, he breaks you ; for he only repeats over in stronger language to the jury his story. Thus you only give him a second chance to tell his story to them. And besides, by some random question you may draw out something damaging to your own case.” This last is a frightful liability. Except in occasional cases, his cross-examinations were as short as his arguments were long. He treated every man who appeared like a fair and honest person on the stand, as if upon the presumption that he was a gentleman ; and if a man appeared badly, he demolished him ; but with the air of a surgeon performing a disagreeable amputation—as if he was profoundly sorry for the necessity. Few men, good or bad, ever cherished any resentment against Choate for his cross-examination of them. His whole style of address to the occupants of the witness’ stand was soothing, kind, and reassuring. When he came down heavily to crush a witness, it was with a calm, resolute decision, but no asperity—nothing curt, nothing tart.

I never saw any witness get the better of him in an encounter of wit or impudence. Very rarely, if ever, did he get the laugh of the court room fairly against him. He had all the adroitness of the Greek Pericles ; of whom his adversary said, that he could throw Pericles, but when he did throw him he insisted upon it that he never was down, and he persuaded the *very spectators to believe him*. Occasionally Mr. Choate would catch a Tartar, as the phrase goes, in his cross-examinations. In a District Court case

he was examining a government witness, a seaman who had turned States' evidence against his comrades, who had stolen moneys from the ship on a distant shore. The witness stated that the other defendant, Mr. Choate's client, instigated the deed. "Well," asked Choate, "what did he say? Tell us *how* and *what* he spoke to you?" "Why," said the witness, "he told us there was a man in Boston named Choate, and he'd get us off if they caught us *with the money in our boots*." Of course a prodigious roar of mirth followed this truthful satire; but Choate sat still, bolt upright, and perfectly imperturbable. His sallow face twisted its corrugations a little more deeply; but he uttered the next question calmly, coolly, and with absolute intrepidity of assurance.

His voice, in examining witnesses, was, I think, richer than in his speaking. It seemed more under control, and more sonorous and musical. In speaking, his frenzy of excitement always robbed his voice of much of its melody. Its tones seemed flattened out by his vehemence, as waves are flattened down by the violence of the very winds that raise them. The contrast between Mr. Choate's tone in examining, and that of the counsel whom he followed, was generally very marked. His voice would seem to take hold of the witness, to exercise a certain sway over him, and to silence the audience into a hush. The highest degree of energy is probably inconsistent with beauty or melody. Hence, in Mr. Choate's extreme energies of the final argument, he lost in mere agreeableness what he gained in striking power. In this he was not altogether singular. Richard Lalor Shiel and Grattan, the great Irish orators, both of them, in their impassioned moments, spoke in a hoarse shriek or scream. Mr. Choate often absolutely choked out his highest notes with a sort

of smothered scream ; but in examining the witnesses, his rich voice was allowed to exhibit much of its variety, and all of its resonancy.

To the professional observer the progress of the case up to the end of the testimony was as interesting as any of Mr. Choate's exhibitions of talent ; his whole forensic strategy, and his close tactics, were so fine. But it was when at last the evidence was all in, the adversary's argument closed (if Choate was for plaintiff), and all done but his own closing argument—then it was that expectation stood on tiptoe ;—then there was the running together, the accompanying crowd, the grand hush of applauding attention, the whole array of accompaniments of which Cicero speaks, when the eloquent counselor occupies the scene which he makes splendid, and possesses as his own.

On these occasions Choate would always try to contrive to end the business of the case at the close of a day ; so that he might have the night of rest, and an early morning of preparation before his closing argument. If, however, it became necessary, he would trust to no early morning preparations, but would sit up all night to conclude and perfect his preparation. Thus, by this exhaustive care well armed and appointed, punctually at the opening of the Court, the crowd would see him to their great delight, come rolling into the court room ; his plethoric green bag in his hand, stuffed to its utmost capacity, very likely a buff-colored law book under his arm, his neck all bundled up in a tippet like the whole of a fleece swathed round it, and his body covered with different colored coats. In later years he will be well remembered as always wearing outside of all a strange-looking gray, coarse, weather-stained coat, which slipped on and off easily. Under this were the ranks of its allies. Thus, on the morning of ar-

gument, he would serpentine into his seat, with eyes cast down, and a deprecating look. Arrived at his little table, one coat, and perhaps two, would come off; and during the few moments of preliminary waiting, he would sit there, looking as restless, nervous, and wretched as a man on a scaffold momentarily expecting the drop to fall under him. His cheeks told his internal excitement, by the darker shades of their coffee-colored hue, and his deep eyes looked spectral in the earnestness of his thought; while constantly his long, bony fingers were tossing up his locks of jet, as if his head burned for more ventilation.

At last, the crier has called, the jurymen are in their seats, and the Court gives the signal of readiness to hear. With no fuss, but with decision, the combatant strips for the work by tumbling off another coat or two; slowly he rises, pushes his table a little back, clears a space hardly large enough for the skirts of his coat to swing round in, and with an unfailing bow to the judge, utters his "May it please your Honor, and Gentlemen of the jury."

In my inexperience, I used to wonder, at first, that he did not have a large space cleared for him in front of his place, appropriate to the mighty effort which all anticipated from him. But herein was his policy. He deprecated anything which should seem to the jury as if he contemplated a grand attack upon them. On the contrary, when at last he opened his mouth to them, he began in a low conversational tone with a remark or two which dispelled all apprehension, and put him and them at once on a familiar, and for the purpose of the case, fraternal footing—"I think, Mr. Foreman and Gentlemen, you will be all very glad with me that we are getting to the end of this tedious investigation." Then he often went on by complimenting them upon the "never-failing kindness" of their patient

attention thus far ; and hoped they would only "from a sense of duty" go with him to the end. Having reënlisted their feelings for him, he did not neglect to notice "the benignity of the Bench," and with calm progress, in a few moments he would seize their entire attention, and glide upward into a current of eloquence as he opened what he called the general "*outside view* of the case." This preliminary "outside view" of his, was a sort of overture played before the opera ; and hinting at every air and chorus which would be played in the whole course of the effort. This, his overture, was a vague idealized passionate view of his side of the whole case, touching every general prejudice or passion which favored his cause, grouping the most telling of his facts in hasty allusion, and giving in rough outline the main idea upon which he relied and to which he wished the mind of the jury to turn. This "outside view" was not unfrequently the most eloquent and captivating section of his whole work ; crowded as it was with every allusion calculated to stir or to propitiate, catching every ray of light which he saw beaming from the case, and concentrating it in the burning focus of one single and simple and central view of all the confused masses of detail to which the attention of the jury had been for hours or days directed.

On this first strike, he greatly relied for conquering his jury. He often said to me, that the first moments were the great moments for the advocate. Then, said he, the attention is all on the alert, the ears are quicker, the mind receptive. People think they ought to go on gently, till, somewhere about the middle of their talk, they will put forth all their power. But this is a sad mistake. At the beginning, the jury are all eager to know what you are going to say, what the strength of your case is. They don't go into details and follow you critically all along ;

they try to get hold of your leading notion, and lump it all up. At the outset, then, you want to strike into their minds what they want—a good solid general view of *your* case; and let them think over that for a good while.” “If,” said he, emphatically, “you havn’t got hold of them, got their convictions at least open, in your first half hour or hour, you will never get at them at all.”

In accordance with this theory,—which was so original and so contrary to all his classic masters of Antiquity,—he threw himself into this mellifluous and mighty overture with the whole thunder of his genius. This was his first grand assault in storming the Malakoff which often towered before him in the resolute brows of the untterrified Twelve. “Try this young captain,” he said once, imploringly, “as you would try your own sailor-boy son, the boy with the blue jacket and the bright eyes; try him, leaning not weakly to mercy, but for God’s sake not leaning away from mercy.” Or again, as he said in a civil case, “Throw around this vessel your protecting arms, for the commerce of our America goes round the world under her radiant ensign. It’s a Yankee ship and a Yankee crew. I’ve too much respect for the fore-castle of my country to credit this monstrous story (relied on by the other side). He! this man! lay the bones of his vessel bleaching on the beach! He’d have taken his gallant little craft in his arms first and borne her to the ends of the earth.” Or once more, “I can not disguise from myself the apprehension that this man is having really a second jeopardy of his life and honor. Remember, gentlemen, how sacred, how august your office is. You will guard him, I know, against this strange peril in an Anglo-Saxon land—the grievous wrong of a second trial for the same offense!”

It has always been the talk of the Bar that cases are

won or lost long before the argument. And undoubtedly the generalship of the case in its progress to argument is of vast consequence. So is strategy in war indispensable ; but of what avail would have been the strategy which preceded Solferino, without the tactics and the valor of that whole summer's day of fight ? Judges, choked with law learning, but devoid of all enthusiasm, and jurymen, wise in their own conceit, have entertained the belief that *they* really decided Choate's cases *before* the argument. But it was all a mistake. Consciously or unconsciously, they were made to change front. It is not probable that Choate often in his whole lifetime rose to address a jury already resolved to give his side their verdict. Yet it is certain that he did get their verdict, in by far the greater proportion of his cases ; therefore, of course, he had changed, had conquered them. But that first hour was the entering wedge of his attack. Rarely in the whole length of his appeal did he rise with more resolute splendor than in that first burst ; that first outbreak of power in which he used to turn so ashy pale, and hurl his argument home, in solid intense mass that *crashed* upon the ear. After that climax, his high-wrought ecstasy dropped again into the familiar level of his speaking. He had told his story ; he had dashed *his view* into their minds with all the illuminating and exaggerating lightnings of his portentous passion. Now, he addressed himself to details, to the business of unfolding, applying, and bringing up the evidence in support of his theory of the case.

It has been said by an able authority, himself a successful lawyer, that " to succeed as a *nisi prius* lawyer does not require the highest order of genius, if indeed they are compatible. It requires a certain commonplaceness of mind and pliancy of temperament and littleness of topic and ver-

bosity of remark, to which the great mind with difficulty stoops, unless disciplined by hard necessity and laborious toil. The jury advocate must, to a certain extent, be a juggler, if not a mountebank and a trickster. Strangest specimens of human intelligence sometimes come together even in our metropolitan jury boxes. The greatest triumph of a lawyer must ever be to suit himself to his jury, to surmount their whims, and to avail himself of their prejudices." But the same authority goes on to observe with equal truth, "Of all these little arts, as well as the noble science of the forum, Rufus Choate has been a diligent student."

It is very true that he mastered all the little tricks and little topics, as well as the grand thoughts and logical combinations by which victories are won upon forensic fields. As he had studied his jury till he knew them every one, so he would say something to hit every one. To his sharpened vision their faces were as glass. He read their souls through that glass. And as reading their souls, he proceeded to attack them, he realized the picture of him in his full action, drawn in words by one who must have known him well; a description so pertinent and good that it can not be bettered. "While pleading, his eye flashes, as it turns rapidly from the court to the jury, and the jury to the court; ever remarking, with intuitive sagacity, the slightest traces of emotion or thought in the eye, lip, face, position, or movement of the judge—ever reading the soul revealed to him, perhaps to him alone, and comprehended by that mysterious sympathy which unites the orator and auditor, as by an electric atmosphere through which thoughts and feelings pass and repass in silence but in power, Choate is aware, with the certainty of genius and the rapidity of instinct, of the effect he has produced upon the judge, whose slight-

est word, he knows, is weightier than the eloquence of counsel ; and at the first slight intimation of dissent, rapidly, but almost imperceptibly, modifies, limits, and explains his idea, until he feels the concert of mental sympathy between mind and mind ; and then like a steed checked into noble action, or a river rising to burst over its barriers, with his mind elevated and excited by opposition, he discourses to the jury logic, eloquence and poetry, in tones that linger in the memory like the parting sound of a cathedral bell, or the dying note of an organ. His voice is deep, musical, sad. Thrilling it can be as a fife, but it has often a plaintive cadence, as though his soul mourned amid the loud and angry tumults of the forum, for the quiet grove of the Academy, or in these evil times sighed at the thought of those charms and virtues which we dare conceive in boyhood, and pursue as men—the unreachèd paradise of our despair.”

His “acting” during the argument, both in his own and during the adverse argument, was consummate. He would state law and stretch law to the jury to the utmost limit to which the court would suffer him to go without stopping him. If at last interrupted by the judge, he would turn round, still talking in a sort of moderate undertone which rendered the judge’s tone inaudible to everybody but him ; but instantly catching the idea as he saw it in the judicial mind, he would repeat his own proposition in different language, shading it so imperceptibly that, for a moment after, the judge could not tell whether he had yielded or not ; then turning with a gratified look to the jury, who had heard hardly a word of the colloquy, he would say, “I have the honor to be in entire accordance with the Court.” If the judge was still dissatisfied, and ventured again to interrupt him, he never chafed, but

changed his statement again ; and if driven to abandon it, he would do so in such a manner that no one but the Judge could see that he had been forced to give up his position ; and if that very judge did not keep a bright lookout, it would not be very long ere the dexterous advocate would wind round once more to his obnoxious propositions, and display them again in strange but substantially similar language.

He never would allow the jury to perceive him at issue with the Bench. Whatever the judicial interruption might be, and no matter how often repeated, he was always good tempered ; yielding when he could not help it, but always parrying or dodging the blow of seeming to be "corrected" by the court. Let the judge say what he might, he would say, "Yes, your Honor," "Exactly," "Just so," "Precisely what I was having the honor to remark." If the interruption was not too adverse, he would often contrive to turn it into what would actually appear to the jury a judicial endorsement of his views.

Sometimes he would evade a shot from the Court by his wit. Thus in a dangerous case, where the very able Judge of the United States District Court was holding the term, Choate, in the argument, alluded to certain rumors as set afloat by a party's enemies. "You mustn't assume that, Mr. Choate ; there's no evidence that he has enemies," interrupted the Court. "He's in large business," said Choate, "and must have made foes." "There's no *evidence*," replied the judge, "that he's in business. He's a physician." "Well, then," replied Choate instantly, with a roguish smile, "he's a physician, and the friends of the people he's killed by his practice are his enemies." Peals of laughter followed this exploit of witty logic, in which the judge heartily joined, and, amid all the noise and con-

fusion, he was able to get on with his argument still uncorrected.

Whenever he had occasion, in his address to the Jury, to speak on law strictly, independent of fact, he always turned to the Court, as if that judge before him must be the fountain of all strictly legal learning.

On matters of law he always spoke, therefore, with great submission to the Bench. This was very wise. Judges are always, especially with us, where the jury engross so much of the deciding power, jealous of their prerogative; and matters of law should never be alluded to without reference to the court.

He spoke, during his whole argument, from a ponderous pile of manuscript scribbled and scrawled over, and crossed and criss-crossed, as if it were a stray ream of paper over which a nest of spiders had escaped from an inkstand. This he termed his "brief." As it was all written in his own inscrutable hand, no one was ever let into the mysteries of its entire contents. There it was, riddled with lines and marks of emphasis and obliterations, and pieces wafered on, all in one tangled, magnificent maze. That and his signature justified fully the caricature description of a wag: "The autograph of Mr. Choate somewhat resembles the map of Ohio, and looks like a piece of crayon sketching done in the dark with a three-pronged fork. His hand-writing can not be deciphered without the aid of a pair of compasses and a quadrant." This brief thus written, was probably a perfect Variety Shop of intellectual wares. It was not the notes he had taken during the trial, but was digested and deduced from them. It probably, to his eyes, beamed with light and burning though scattered thoughts which he had jotted down during the trial. But though he took up in his hand, as

he went on, sheet after sheet of this manuscript, yet he rarely seemed to look at it with any but the most casual glance ; and often he would go on for half an hour without referring to it at all ; then he would turn over and lay down twenty pages of it, to find the place to which he had arrived. It all seemed to be lying in his mind. Indeed, he has told me, with approbation, of the way Alexander Hamilton prepared his argument in the great case in New York which settled their law of libel. He wrote it all out the night before, and then deliberately *tore it up*. Mr. Choate, I am satisfied, might have argued his case in most instances if his brief had been torn up or stolen. He had a marvelous memory. One effort of composition and of committing to paper, seemed to write it also ineffaceably on his brain.

I have spoken of his treatment of interruptions by the judge. To an adversary interrupting him, he was always ready to reply, and he bore down as hard as he could upon him. An interruption from that quarter always chafed him ; and he resented it in every way, except by *impatience*. Here his good management and quickness was apparent. Often the counsel interrupted under a misapprehension of the precise point Choate was aiming at ; still more often from mistake as to the evidence ; for Choate himself rarely was in error in his evidence. He heightened and exaggerated evidence, but never falsified it. But whether well or ill founded, an interruption to his fiery course galled and worried him. The sympathy of a jury is always, however, naturally with the man speaking, not with the man who stops him ; and Choate not only contrived to prevent the adversary from making any thing out of his attempted correction, but generally contrived to make a positive gain for himself ; for he made the jury see, without his saying so,

what a grievance he felt it to be, to be thus checked in mid career ; and unless the point made by the obstruction was an exceedingly good one, the sympathy was all for Choate. If the interruption was on Evidence, Choate was generally either right, or so nearly so that nobody could tell exactly whether he was or no. If counsel threw in a witticism at his expense, Choate was instantly ready with an apt retort—generally courteous, but often killing ; for the movements of his mind were electric flashes.

Sometimes during an attempted interruption, unless it was undertaken with coolness and decision, he would go right on talking, as if he didn't hear or care for the call made upon him, and utterly preventing the jury from apprehending the point attempted to be made by his enemy. Frequently this was because he did not want the jury to find their minds diverted from what he himself was endeavoring to say ; not because he feared that he would prove to be wrong. If the adversary went on, he would get directly between him and the Jury, his broad shoulders seeming to widen like a wall between them, and raising his voice in a paroxysm of clamor, would crush or drown the comparatively timid foe. But if still resolutely, the correction was insisted on, he would seem to assume by his words that of course he must be right, and the hindrance was a trick, an impertinence, and a wrong. "One at a time," he would say. "Don't talk so fast." "I have the floor." "I propose to argue *my case*." "Will my brother *allow* me to argue my case?" Or again, when the cloud raised by the interruption was a little cleared up, he would say, with a fine promptness, "These repeated interruptions only afford me a new opportunity to present my impregnable case. It will tire you, Gentlemen of the Jury ; but my brother's interposition renders it necessary." Or sometimes he would

say, if he was for plaintiff and closing, and the adversary was very persistent and troublesome, "If you propose to argue your whole case over again, I will submit it to the Court, whether you shall be suffered to ;" or again, "I know that I am right. I have most carefully collated my evidence last night and this morning. I know I am right ;" and then, adroitly, "I do not object to these interruptions *except for the time they take ;*" as if it were utterly impossible, even if they were well founded, that they could be good for any thing, or able to help so bad a case as the adversary's.

There was one cool, imperturbable lawyer of the Suffolk Bar who was, I always thought, a goad in his side when they were hostile. He was as cool and smooth as marble ; he could not be put down, and his whole manner was as superciliously self-conceited as it was possible to be and not be impertinent. It was only manner, though, for he was a gentleman at heart ; but he lacerated Choate. He would rise so deliberately in the midst of one of Choate's torrid climaxes, when he was storming and fuming and getting the Jury under complete subjection, and with a manner so sublimely certain, *stop* this express train of fervid splendor ; and then state his objection so coolly and so exactly—for he had the great power of statement—adjusting his eye-glasses all the while, with a satirical half-sneer on his hard and arrogant lip. It was like the spear of the hunter, in the sides of the plunging and racing beast of the forest. Sometimes Choate could shake him off, but rarely. Generally he had to grapple with him ; and then the fire would flash into his eyes, as he would take hold of him ; and come down with some scathing repartee, or do some queer thing, which would set the whole house in a roar. Once I saw him, when a third time challenged thus by

this counselor, come to a dead stop, and making as much fuss as possible, to mark it to the Jury, said he, "If my Brother proposes to argue for his client a little more, I will sit down and wait." And sit down he did ; but instantly getting up again, he began to put on several of his coats ; diving into them with a parade of energy in stopping, and a distressed look, as much as to say, "this unnecessary delay is prodigious, but it is all for *his* sake—he is the culprit cause"—so that he got the Bar into a tumult of mirth. Meantime, "unshaken, unseduced, unterrified," the cause of all this exhibition had been steadily fixing his eye-glass on the bridge of his nose, and calling the attention of the Court to the evidence ; which, he insisted upon it, was misstated. On this occasion, either Choate really was wrong, or he chose to abandon the particular piece of evidence in order to make a great point ; for he immediately rose and began to strip again ; saying, in a tone which multiplied the laughing tumult, "Oh, is that all ? Why, what a trifle ! I'll give that point up, and let my Brother have it just as he's a mind to." It may be imagined, upon this ending of so great a fuss, which party gained the most by the interlude.

It was in allusion to this appearance of absolute self-satisfaction which the gentleman who was the lawyer in this case uniformly displayed, that a story was for a long time current at the Bar, whose wit was attributed to Choate. For it was said, that some one met Mr. Choate late one afternoon revolving round the Boston Common, while, crossing it diagonally at the same time, was the aforesaid counselor, moving with placid satisfaction. "What do you think our friend there is thinking of ?" said the third party to Mr. Choate. "Well, I should imagine," replied Choate, speaking slowly—"I should

imagine, from his air and manner, that he could be thinking, at this moment, of nothing else but the question, whether God made him, or he made God." This story ran current in Court Street for a long time. I do not vouch for its truth, but probably there are many who would.

Sometimes Choate had the judge fairly and flatly on his side in his argument of a cause, and received aid and comfort from him. This was not often, but when it was so, he made a vast parade of it. No Median or Persian fiat was ever more decisive than this intimation of judicial approbation; as he then represented it to the jury.

Yet, on the other hand, when Court, counsel, fact, every thing was against him, and when any other man would have been utterly floored and extinguished for the moment by the shock of an unfortunate misstep in argument, Choate stood immovable. His gloomy face would grow paler, not gloomier; but he would get out of the difficulty with unabashed effrontery and unfailing resource. One of these scenes, which I happened to witness, was so characteristic that I sketched it for a newspaper at the time as follows:

"A curious mischance happened to Mr. Choate on Wednesday, in the trial of his insurance cause, with Mr. Hillard on the other side. He had been arguing with unusual vehemence and labor that the other side didn't dare ask their witnesses about the stowing and arrangement of vessels loaded with grain, as respects sea worthiness, although they made a great show of asking them about vessels generally. 'Name one witness,' he thundered out over the meek head of Mr. Hillard, the opposite counsel; 'Name *one*. I should like to hear of *one* to whom they ask the question as to grain laden vessels.' Mr. Hillard quietly

said, 'Captain —— testified in answer to inquiry upon that very point.' 'Impossible,' said Mr. Choate; 'I carefully collated my notes of evidence last night, and I *know* there isn't *one*.' After this brief but emphatic denial, he was rushing on in the fiery tide of his usual lightning-like style of advocacy, when he was stopped by Mr. Hillard's quietly appealing to the Court as to the truth of his having named *one* witness who swore directly in the teeth of what Mr. Choate was saying. The advocate stopped in mid career, evidently impatient as a racer curbed, to hear the Judge; who, turning to his minutes, read in plain language the statement of the witness as expressing the closest and most deliberate opinion expressly with regard to grain vessels. A general titter began to prevail, and 'what the speaker could say now,' was the universal feeling; pausing a moment, and giving that peculiarly solemn expression of face which those who are familiar with him so well recognize, the great advocate broke the silence by the simple question, twice repeated, as if to the judge, but really to the jury, 'Does that witness say *how many* grain vessels his experience embraces; *how many*, is the important point. I am arguing that the experience of persons experienced *chiefly in grain* vessels is not, and dare not be, asked by the other side;' and saying this with great soberness and without a muscle of his rigid features changing, he turned the attention of the jury; and rapidly rushing into another part of the argument, it was found that he had led them and the minds of the auditors off from the desperately bad break in the link of his argument, before they had time to decide whether it really was true that Mr. Choate had fallen into a blunder not more overwhelming than it was laughable. Anybody else, after such a preceding flourish of trumpets, to have been so floored, would have been utterly

extinguished by the unanimous mirth of Bench and Bar. It is due, however, to Mr. Choate to say that he very rarely makes such a trip or is so put to his trumps to recover himself."

If he was interrupted in an unimportant point—unless he thought it would distract the jury from attending—he would make much parade of acquiescence. "I desire to be fair. I believe you are right, sir—quite right. I submit to my Brother's correction," he would say. To be corrected, never troubled him merely because he was proud of being right. He was troubled only because he was afraid of its effect on the jury. He was far, very far above the small vanity so conspicuous in his great rival for American forensic fame, William Pinkney. Pinkney would even swell and domineer if he was disputed as to an authority which he quoted in respect merely to its position on the page. He said to the Supreme Court of the United States on such an occasion, "Send for the book; and now, before I open it, I will tell your Honors not only the exact authority, but the exact place of the authority as it stands on the page, and the page itself with equal exactness." The book was brought, and it was all even so. But Choate never would have done this. He would have preferred even to appear in the wrong about an unimportant point, if only to save a brother lawyer from mortification. He had hardly any pride of opinion. He cared for victory, not opinion.

But I have seen him, when attention was diverted from the current of his talk to the Jury by an unseemly disturbance of an outsider, seem very savage and stormy. Once, in a great Patent case, the opposite party to the suit, an elderly man, sat some little distance behind him with his counsel. During all Choate's unusually brilliant

argument—for the achievements of great inventors always inspired him—this adverse gentleman kept up a constant but subdued derisive chuckle ; and at length, at a grand burst of enthusiasm and spasm of gesture in the advocate, he laughed quite audibly. Choate was just sweeping his doubled fist about his head, his eyes glancing flame, and screaming out, “ I tell you, Gentlemen of the Jury, as the great Italian artist said, glowing with the consciousness of commensurate genius, ‘ We also are painters ’ ”—when he heard the laugh. Hardly finishing his sentence, he turned directly upon the chuckling enemy with both fists clenched and as much *fight* in his face as was ever seen there ; he advanced upon him two or three steps scowling terribly, till he fairly quailed under the broadside of his fierce glance. “ Sir,” said he, in slow, measured words, every syllable of which was a volley, “ *let him laugh who wins.* ” The man seemed to shrivel up under the fire and the glance. There was no more outside laughter in that case, and—Choate *won*.

When he was for the defendant, and therefore made the first of the closing arguments, he was quite fair about interrupting the other side in their final argument. But when he was in this position of speaking first, he always reminded his adversary if he undertook to correct him, that he had the close upon him ; and he very much preferred to have his errors corrected in the closing argument, and not by frequent interruption. He probably knew it was not likely the counsel would ever recollect it afterwards, or, if he did, would present it as forcibly as it could be put at that instant. But if the opponent was too wary, and wanted the Court to see the correction made *now*, Choate would sigh out with a tone of deprecating sadness, “ I have no chance to reply on him ! and my brother is de-

terminated that my unhappy client shall not even have his case fairly presented."

While the adversary was closing upon him, he always sat by and watched him during all the address. Although his own active part was done, yet he never left to his junior the task of following the current of the enemy's statement. Wrapped up in his coats, he sat still, apparently with no solicitude; never indulging in the cheap trick of belittling the adverse argument by sneering or smiling contemptuously. He seemed to assume, by his manner, that although this was an able argument which they were now hearing, yet he had placed his own case so beyond the reach of danger that he could listen to it unmoved. If he interrupted, he did it decidedly, but modestly. And if the opponent grew restive, as a half-timid advocate generally will, he would mutter, audibly, he "*supposed* his brother *wished* to get the evidence right." As much as to say, that if he didn't wish him to correct the error it would be the Jury's and the Court's loss, not Mr. Choate's.

The Material of this great advocate's argument, was a mysterious consolidation of the most dogmatic and positive assertion, the closest logic, the driest law, the most glittering poetry, the most convulsive humor, fired up by an enthusiasm uninterrupted and contagious. In the first place, he constantly put himself into the jury-box, as it were; that is, he constantly made a sort of confidant of each jurymen. He abounded in expressions like these: "Now, Mr. Foreman, what should you think of such a proposition?" "You see, gentlemen, here's the exact pinch;" or, "I thought I wouldn't read all this letter to you; but perhaps it would be fair, and you'd like to hear it." "I want you to explore these letters with me, for I think that"—running his eyes along their faces with a very

significant look of mischief—"I think that *it will pay*." All sorts of familiar colloquialisms were ready at his hand, and he used them freely; shooting them across the picturesque web of his rich and recondite language and allusion.

Scarlett, Lord Abinger, was altogether the greatest jury advocate in England of modern times; as far as regards the mere winning of cases, and gaining of juries. He addressed them in a very simple, easy, confidential sort of a way, never rising above a conversational tone. He would ridicule an overwhelming case out of Court. He would rise in the face of a perfectly conclusive showing on the other side, and with unblushing effrontery say, "Why, gentlemen, my case is clear; *you* are not to be deceived by this labored and specious pleading on the other side." Inasmuch as he leveled himself right down to each jurymen, he flattered and won them; and, it was said, he won because there were twelve Sir James Scarletts in the box.

Although Choate began his great arguments in a conversational way, and had a basis of conversational manner in all he said, yet it was by a very different style of address from Scarlett that he contrived to produce the same result of getting himself "into the box." But, certainly, he did often produce the result of making the individual Jurymen feel as though he was sitting with them, man to man, face to face, and talking it over. Intermingled with all his elevated literary topic in argument, there was so much that was homely, so much that was direct, so much that took right hold of the bosoms and business of men, and it was given to them in such a friendly and fraternal spirit, that if there were not twelve Rufus Choates in the box, there was something better—a Rufus Choate in front of them, who seemed a most influential and advising friend of their Jury family.

In his whole jury appeal, there was nothing more wonderful to the professional eye than his speech directly upon the Evidence, and his comment on the Witnesses. Neither his oriental ecstasy of eloquence, his remorseless grasp of the whole mass of detail, his consummate learning in the law, all which were displayed here, in any degree surpassed his transcendent talent for marshaling the evidence, and discussing the witnesses.

He had every part and parcel of the Evidence in his mind, and knew its precise relation and bearing ; then he would take the most trifling and unimportant single circumstance which had been sworn to, and putting this and that together, and revolving every minute particle of testimony a long time, and with vast variety of phrase and illustration, and interweaving and piecing out with little scraps of inference and fact, he managed to weave and plaster together a firm foundation, where no human being but he would ever have found a footing. Then in weaving and massing together these threads of facts, he held steadfastly before him ever the grand central figure upon which they were to fit—the hub around which all were to revolve—the theory upon which his whole case went. He never had, like some weak-minded advocates, several theories ; each to be used in case of need in any new pinch of the case ; he had *one theory*—one central, commanding theory—and all the evidence squared and dovetailed into and upon this one ruling center, which commanded like a sentinel every particular and every portion of the whole variegated field.

And against the view or the successive propositions which he presented, he always asserted there was not “the shadow of a shade of testimony ;” he would repeat often, and with vehement positiveness, such expressions as “There

is not a scrap of evidence which negatives this ; no, gentlemen, not a scintilla of evidence." "Scrap" and "scintilla" were famous words of his, as applied to evidence.

He exhibited great power of expanding and magnifying a little bit of evidence into importance, by dividing it and subdividing it and talking on each head. If, for example, his proposition is something which, simply said, would not be very impressive, but he has no better ammunition, he talks about its belongings and incidental considerations and hypothesis and details ; till having enforced these so as to make an impression, doubtful, perhaps, but favorable, he comes by successive risings to the real gist and weight of the matter, by a slowly-reached climax. The art on which Cicero lays much stress, namely, that of exaggerating, or, on the other hand, of belittleing and extenuating the weight of testimony, he wielded most skillfully ; and displayed wonderful fertility and invention in the exhibition.

If there were several considerations which, when taken independently, would not be very forcible, he would throw them in as reasons why, if nothing else, "the burden of proof" already lying on the other side, should be severely enforced and exacted.

Sometimes he would make a great parade and repetition and enforcement of a simple and comparatively unimportant item ; thus, in a Patent case, the elementary idea that one inventor shall not monopolize all invention, I heard him repeat in different words, *successively, six times*. Again, I remember a single short sentence of four or five words upon which he wished to fasten the jury's mind ; he repeated it right over and over three times ; laying the emphasis each time on the word succeeding the one he had before emphasized.

His analysis and subtle refinement in discriminations was marvelously acute ; he so analyzed and refined, as almost to re-create ; and the clearness and cogency with which he made these minute and shadowy differences plain to the most ordinary apprehension, was by no means the least wonderful of his accomplishments. On the other hand, he was equally potent in seeing through, and breaking down the opponent's nicely accumulated analogies.

In a Power Loom Patent case, the adversary had argued that because several delicate parts of the rival machines looked like each other, their original ideas were similar, and therefore there was an infringement. "As soon," said Choate, ridiculing the model introduced to show this, "as soon, go to the graves of the buried dead, and taking a little dust from this one and a little dust from that one, present them on paper, and argue from their similarity a likeness of the bodies to which they belonged in life."

In his whole management of the minute details of evidence I think it would be generally conceded by the admirers of both, that he was decidedly superior to Webster.

Mingle in now with this masterly maneuvering of details, constant appeals to sympathetic feelings ; constant touches upon all that lies latent in man's nature of warmth and the holy traditions of youth ; constant addresses to the waste of passions that lie grand and gloomy on all but the most shallow souls ; and you can form some conception of that portentous power which he wielded ; and which made him, as the learned Professor Greenleaf said, before a Jury, "more terrible than Webster."

His discussion of the Witnesses themselves personally, was striking, cunning, convincing. If he wished to break a witness in the confidence of the jury, he made no direct assault upon him ; that would have been a bungling and

often an ineffectual proceeding. No, he described the witness generally, remarking, perhaps, that it was of very little consequence whether he was believed or not; but then he would go on to insinuate rather than express a thousand disparagements. These were often well deserved, but they would not have taken effect, unless uttered adroitly and rather indirectly. All through this discussion of the comparative merits of the rival witnesses on both sides, especially if they contradicted each other, he would exalt or overcolor his own witnesses, and undercolor the adversary's. "You could not fail to observe, Gentlemen of the Jury, the manliness, the manifest willingness, the straightforward story of our six witnesses to this point, all of them honorable men;" "I do not wish to defraud my Brother of his witnesses' character, but one could hardly fail of observing their apparent indifference to the solemnity of their oath, their swiftness of reply when he questioned them, their slowness when we did." "I pass no judgment, but I put it to you whether you saw *honesty* written fairly on their foreheads." This line of observation was frequent, although the two rival bodies of witnesses were to the disinterested spectator seemingly of equally fair manner. It is not probable that Mr. Choate ever in these instances deliberately proposed to blacken an innocent witnesses's character; but he was so identified with his own side, that every thing adverse seemed to him discolored with evil, and he showed great rhetorical ability in disposing of witnesses without directly damning them.

His speeches to the Jury abounded in the most dogmatic assertion; before he had spoken fifteen minutes, he had, according to his own showing, utterly disposed of and annihilated his adversary's case; again and again he had said, "This consideration puts an end to their case;" yet

he went on, although, as it would seem, sublimely conscious that the remaining six hours of his talk must be mere surplusage. His practice often exemplified the truth, that the mere statement boldly and confidently made, that your case is *good*, is influential with the jury ; but when he had piled up dogmatism and proof and passion all together, he would add, " But this is only *half* my case ; I go now to the main body of my proofs."

He always spoke with a rapid and overpowering rush of words and thoughts. As he dashed on in his argument, in pointing to and taking up papers, models, books ; in turning to the Judge or the Jury ; in his under tones to his associate counsel ; in his whole mental or bodily movement ; there was prodigious velocity, yet perfect time and composure ; his mind, in fact, moved at this fearful rate naturally—it was as rapid as consistent with sanity. In the attempt to keep pace with him, reporters have often thrown down their pens in utter hopelessness ; in the same fruitless attempt to keep up with his own thought, his own pen would fly over the paper in a long wavy unintelligible line, which, after a week had elapsed, he could hardly decipher himself. Some one said of him with great propriety, if the magnetic telegraph were affixed to his lips, the words would heap upon the wires.

His enunciation was in a rapid and uninterrupted flow, and his sentences, though finished with the most perfect accuracy, were long and often involved ; and for this reason it would be difficult for any reporter to keep pace with him. But a still greater difficulty was in his power to magnetize his auditors, and make them oblivious of every thing else while the spell of his eloquence was upon them. The story of the short-hand writer who was employed to report one of his arguments is scarcely an exaggeration. Soon after

the argument was commenced it is said he dropped his pencil, and remained gazing at the advocate till he had closed. When called to account for his neglect to make the report, he asked, "Who can report chain lightning?" A grave lawyer who heard him for the first time when he delivered his address before the New England Society at New York, in which he uttered the famous expression, "a church without a Bishop, and a State without a King," remarked that it was different *in kind* from any thing he ever heard before. "It was," said he, "a series of electric shocks, and we couldn't keep our seats. We kept clapping and cheering without being conscious of it."

It seems strange that a mind so compact and comprehensive as his was, should have expounded his views to the jury in arguments uniformly of great length. If any man could put fact, poetry, passion into condensed masses of sentences, he eminently could; but he preferred to talk on and talk on, always, though, talking to the point. When you thought he had exhausted his theme, and exhausted himself, he would, as it were, recommence with the remark, "But, gentlemen, this is not half the strength of my argument." Rarely, however, if ever, did his jury get tired of him. I have known men say at the conclusion of three days' speaking by him, "Our only regret was that he stopped." Though he could cover an equally wide plane of philosophic speculation with Edmund Burke, yet he rarely, like him, laid himself open to the sarcasm, that he "went on refining when they thought of dining." But still it may be questionable whether he did not speak too long. It resulted from his anxiety to cover every possible point, clear up or cloud every possible difficulty; and in doing so he presumed upon great ignorance to start with in his Jury.

When Pinkney had argued a day in the United States

Supreme Court on the simplest principles of elementary law, the Chief Justice blandly remarked to him as they were gathering together their papers for adjournment, "Mr. Pinkney, there are some things that the Supreme Court of the United States are presumed to know." Very few things indeed, however, did Rufus Choate assume that his jurors were presumed to know.

His whole theory of argumentation was the exhaustive one; to exhaust every possible line of thought directly bearing on his theory. Webster, on the contrary, used to group and select the witnesses to whom he would allude, and on whom he relied; he put their words into a single mass of testimony, and hurled it home in comparatively few sentences;—few, but thunderbolts. As he came on, all would be dark where Webster advanced, save as his bolts of thunder struck and illumined; Choate, on the other hand, advanced with a diversified but long array, which covered the heavens; thunderbolts volleying, auroras playing, and sunlight, starlight, and gas light shooting across the scene in meteoric radiance.

I do not think his audience in a Court room had any perceptible effect on him in speaking; any more than a vast array of spectators to a grand battle would have influence on the mind of the Generals in command; he was fighting *his* battle; and he thought not of observation, but of victory. In this how different he was from Erskine or Pinkney! But Choate lived in a region of thought immeasurably above vanity; he was proud,—I have sometimes thought him *very* proud,—but he never for an instant surrendered to self-consciousness or conceit.

He often used his audience nevertheless; but it was by moving them to demonstrations of applause or mirth, which should act involuntarily on the jury. We are all

human, even when trying to be judicial; and the spectacle of a crowded court room manifestly delighted with a sentiment, would send it home to the breasts of the Twelve with redoubled power. So he used his audience to deepen his impression; they were the deep pedal which he pressed, when he wanted his instrument to strike the diapason of a mightier music. But their presence did not yield him any stimulus; not into their eyes did he look for sympathetic homage; into the Jury's eyes alone, he bent all his most passionate, most wooing, and stormiest glances.

He always in his speaking not only talked to some specific verdict or point, but he also talked to some particular person or persons. He said to me often, "This standing up and addressing a crowd vaguely, an undefined mass, nobody in particular, and wheeling on the heel, looking about from side to side, can not be the thing; it is no better than standing up and fiddling." Therefore he always said, "Talk to *somebody*." Accordingly, in his own practice, he would stare down into the eyes of the gaping jury with a basilisk glare; and sometimes in a speech on the platform he would fix his eyes so intently on a person or squad of persons that it would be very marked. I have known him to turn his impassioned glance of fire on a front seat full of people, and rush forward to the edge of the stage as if he would transfix them with a gesture and a look; so that they absolutely started back from those frenzied eyes with a momentary terror.

It would be well if public speakers would, in some degree, advert to this example. Ministers especially lose half their efficiency by talking vaguely in the air, as if they were addressing shadows, not sinners.

As will be seen in Mr. Choate's conversations hereafter, so also in his Addresses, his classics played a most impor-

tant part ; he would levy on his Greeks and Romans for illustration with much freedom ; but he seemed to have the whole realm of Antiquity under fee to his mind ; the words of the ancients were as much his own as the words of moderns. Under what instantaneous command he had the classic wealth of story, and how felicitously he used it, will appear by the following anecdote related by an eminent politician who was present on the occasion of its occurrence :—

“In the winter of 1850, a large party was given in Washington, and many illustrious personages were present, who have since, like Mr. Choate, gone down to the grave amid the tears of their countrymen. The Senate, at that time worthy of the name, was well represented on this occasion of festivity, and the play and airy vivacity of the conversation, with ‘the cups which cheer but not inebriate,’ relaxed at intervals even senatorial dignity. During the evening the subject of ‘Young America’ was introduced, his waywardness, his extravagance, his ignorance and presumption. Mr. Webster observed that he hoped the youth would soon come to his senses, and atone, by the correctness of his deportment, for his juvenile dissipation. At the same time he added that, in his opinion, the only efficient remedy for the vice and folly of the lad would be found in early religious training, and stricter parental restraint. Mr. Choate declared that he did not view the hair-brained youth in the same light with his illustrious friend ; that every age and country had, if not their ‘Young America,’ at least something worse. The character of Trajan, the best and purest of Roman emperors, said he, was unable, with all its virtue and splendor, to check the ‘Young Italy’ of that day. Our lads would seem to have sat for the picture which has been drawn of

the Roman youths by the hand of one who seldom colored too highly : ‘ *Statim sapiunt, statim sciunt omnia; neminem verentur, imitantur neminem, atque ipsi sibi exempla sunt* ’—which, translated, reads thus : ‘ From their cradles they know all things, they understand all things ; they have no regard for any person whatever, high or low, rich or poor, religious or otherwise, and are themselves the only examples which they are disposed to follow.’ Mr. Benton thought the quotation too happy to be genuine, and demanded the author. Mr. Choate, with the utmost good humor, replied that his legal habits had taught him the importance of citing no case without being able to give his authorities ; he called for the younger Pliny, and triumphantly showed the passage, amid the admiration of that brilliant assembly, in the 23d letter of the 8th book of the younger Pliny !—Our informant remarks that the history of literature, perhaps, can not show an equally felicitous quotation.”

Myriads of examples might be cited of Mr. Choate’s prompt fertility of classic illustration in Court. I remember a Patent cause, where he was exhibiting a model of a ship to a jury. After exhausting the description of the parts, he stopped ; then glancing at the Foreman, he said quickly, “ But why do I talk of these things so minutely to you ? it is like *talking on war before Hannibal* ; ” an allusion, it will be seen, to a beautiful passage in Cicero’s “ *De Oratore*.”

He once commenced a legal address thus, “ In the language of the Greek epigram, Gentlemen of the Jury,” etc. What the Greek epigram was, that jury of hard-fisted fellows knew no more, than they knew what the stars were made of.

In the famous *Shaw Case vs. The Worcester Railroad*,

one of the witnesses, named Colonel Rice, testified that the wagon containing the party who were struck by the locomotive, came on at a steady pace till close by the track, where the horse stopped; "Yes," said the witness, "the horse stopped; the horse thought"—"Wait a moment," broke in the rich voice of Mr. Choate, and rising, he addressed the Bench, "May it please your Honor, Homer tells us in the 'Iliad' of the dogs' dreams; but I prefer better authority than Colonel Rice's for the horse's thoughts. I object to the statement;" and, amid much laughter, it was ruled out.

He showed in his argument, when he closed a case, that, in the progress of the cause, nothing, not the slightest thing, had escaped him. He had watched every face in the panel; he had watched the countenance of the Court; he had watched the successive witnesses—every decided look, or tone or demonstration which any of these personages of the drama gave, he remembered. Many a juror has been astonished to hear him in his argument, days after the occurrence, refer to an expression of satisfaction which he had given at a particular phase of the trial. So whatever slight signals the judge held out, of the way he meant to rule or the leaning of his feelings in any manner, was carefully noted by his unerring eye, and made use of, either in introducing evidence to meet it, or in argument to propitiate it. His mind vast, delicate and minute, held the whole case in distinct view, no matter how long it took, and fastened in turn upon every part of it—the historic, the personal, the legal aspects all alike—and grasped them all at will, touching them in their exact relations as a great master would touch with sure vision the manifold keys of a grand and complicated instrument.

There was no shriek of passion, no keen thrust, no

seeming digression, no splendid apostrophe that was not expressly meant for an object. It hit somebody, or meant something. Not a floral word, not a logical inference was uttered by him that did not tell somewhere. For a man of so much inflammation, this was marvelous.

In a succeeding chapter will be found a critical description of his Eloquence ; but one or two singularities peculiar to his Court room speaking may be mentioned here. He employed two extraordinary instruments of gesture—*his nose* and *his heels* ; as he closed an intense and long burst of passionate periods, he would straighten up before the jury, his head go back and erect itself like the crest of a serpent, and then he would draw in the whole volume of his breath through his large nose, with a noise heard all over the Court room ; and, singular to say, this strange noise, so far from being laughable, was most emphatic.

As he stood there before them, with his dark Norman face, his thick curving eyebrows, his square-built frame and stature, and strong countenance, so adapted for tragic effect ; the French fire of a chivalric enthusiasm dancing in the eyes so deep with passion ; and looking reckless and defiant ;—as thus armed, he paused with a firm toss of his proud head backwards, and making this singular noise, seemed to snuff the air with dilated nostril, he looked as beautiful and as formidable as the wild leopard of the jungle crouching for the deadly spring. Then, when he wished to double and redouble the force of his expression, he would close his sentence by coming down on his heels with a muscular rigidity, which absolutely would shake the whole Court room.

In allusion to this, I remember hearing one of his aged antagonists begin his speech to the Jury by saying, “I care not whether my brother Choate in his eloquence

takes the roof off, or breaks the floor down, I shall go on to set out the evidence calmly, etc."

Choate had also a queer way of shaking himself up, as it were, in the progress of a speech. If he found himself lagging in ardor, he would give two or three tremendous emphases, accompanying them with a convulsive jerk of his whole body, which would seem to shake every bone in him in its socket, and every rag of clothing on him out of its place. Then, fired up by this stimulating spasm, like a fighter cheering for a charge, he would dash on with a wild barbaric ardor; then came the moments in which he looked absolutely *savage*; the tame man became a wild animal then.

I have seen him almost transfigured in his appearance, and swept utterly out of the range of common thoughts. I do not think, at such moments, that for single instants he knew anybody, or took in with his eye any intelligent vision; he was wrapped up and lost, as one in a trance.

There is no doubt that great, impassioned, imaginative orators, are in their climax moments in a sort of *trance state*, a state of utter absorption of isolation from earthy scenes and spots; such as the elder Booth, when he *would not die* in Richard III., but chased Richmond out of the window of the theater; or Mrs. Siddons, with her dressing room door open facing the stage between the acts, that the illusion of the scene might not for an instant pass off from sole possession of her mind. When Kean played Shylock, he was Shylock; and a voice in the pit was heard in a smothered shriek, saying, as the flames mounted to his eyes, "Let me out—it is the devil;" so I have seen Choate raving away before a jury, and before four thousand people, spell-bound himself, and enchanting them into a willing submission to his sway.

His hand played a great part in his dramatic effects ; it trembled and vibrated as he extended his arm, more violently and nervously than the hand of any other orator who ever spoke in America. Mr. Everett occasionally exhibits this tremble, and did it with great effect in the climax sentence of his eulogy on Mr. Choate, when he spoke of his "imperial clarion ;" but even then the audience of Faneuil Hall saw nothing like the furious nervousness of movement, which they have often seen in the waving of Choate's almost unhinged hand and fingers.

Mr. Choate's voice was not so good for halls as it was for Courts ; generally in them, he was not loud ; but in great moments he was extremely loud ; his voice, then, like Chatham's, rang out, and through the green doors, and into the lobbies, and down the stairs ; and many a time I have known he was speaking in the Court Room long before I had climbed to the top of the stone stairs which led to it.

Into every portion of a case, whether trivial or serious, he infused the same wild, Saracenic ardor ; but especially and a thousand times multiplied, into the final argument. He was full of what the men of Magenta called "elan"—dash and rapture. No matter how dry and meager the facts, how hopeless of adornment the issue, it was all poetized to him by its relation to his battle. It might be an outpost, it might be a slight engagement on the distant wings, but it was all his battle.

When the great Napoleon, in his letters to his brother, King Joseph, says, amid his thoughts of empire, "Be careful of those shoes I sent you for the army of Spain ; they cost me so much apiece. They are well soled, and the upper leather strong," this dry detail is as interesting to the imperial writer as the direction to advance a column, for both alike are his movements of battle, both are of his

apparatus of victory. So to this wild and wonderful man, the Napoleon of the Courts, the simplest transaction, the most lowly words, assumed the place in his battle speeches of epic incidents and lyrical expressions.

Mr. Choate had in his own nature the enthusiasm of poetry and of passion both. Poetical and cultivated people are nothing before a practical Jury ; but even ignorant people, inspired with passion, are always efficient with them. But when both are combined, poetry and passion together, they domineer. Men must yield in virtue of their inborn sympathies and sensibilities ; more particularely if both passion and poetry are regulated by common sense.

In life Mr. Choate did not always exhibit good, plain common sense ; but in dealing with his jury he always did. At the funeral meeting of the Suffolk Bar for him, Governor Banks, a member of that Bar, expressed the opinion that at the basis of all Mr. Choate's dazzling intellectual displays was a foundation of solid Saxon common sense. And it was so, or he never could have manipulated Yankee juries as he did. The marvel and the miracle was to see this common sense blend with and support such magical improvisations, such transporting raptures. Talma, the great French actor, said that in his plays he saw not the people, saw not the coroneted boxes of the imperial family ; for as he walked upon the scene of his tragedy, the colors of things grew red and bloody ; and around the tiers of galleries he seemed to see skulls and death heads crowded and grinning. Even thus changed and transfigured was all the scene of his action to this great actor of whom I am speaking. Not that he saw such tragic images as these ; but he doubtless saw for a moment, in the glory of his passion, glimpses of hands, and caught snatches of sounds, the offspring of his own unearthly imagination ; yet at a

moment, at an interruption by the Court, at an expression of distrust shooting across a face, he would come back to real life, and come down to plain fact and take a new start again on common sense ground ; dispose of the difficulty ; and sweep even more victoriously on from this fresh foundation, into his glittering realm of thought. Common sense was the basis of his thoughts and of his talk. He was full of sentiment and of womanliness, but he was far from being a sentimentalist.

To listen to one of his Jury appeals was a very great pleasure to any man, but to an intellectual man, it was a treat of the rarest delight ; to trace the literary allusions, to remark the significant sentences which he threw off, modeled on famous sentences in Antiquity ; to feel the charm of the luxuriant language, to catch the impulse of his whirlpool of thought, and to know all the time that all this was shaped by a gauge and rule of exactest application ; and then to bend before the witchcraft of his manner, your mind fascinated by the jugglery of his art, and your senses yielding to all the varied sorceries of his speech. This to a mere looker on was an epicurean banquet. To a lettered mind, a speech of Choate's suggested a thousand associations and references of beauty and of power ; the scenes of history over which our hearts gave their young tears ; the memorable thoughts of ambition ; the grand sentiments speaking of all that is noble and admirable in man, which have survived time ;—all these and such as these, were often on his tongue ; the treasures of literature, the grace of thought, the kindling allusion, the startling illustration, all combined to create the charm of his enchanting rhetoric.

It is true he did not argue many *great cases*, but he made many little cases great ; and many little men tem-

porarily great. You would be in a small dull Court Room, in a dry and petty case ; *he spoke*—and the scene lifted and opened, as if the walls were hanging curtains rolling up at the bidding of a magic tongue to let you see the scenery of enchantment all around. To how many country Juries innocent of all liberal thoughts, has he given the vision of strange stars ; he has, indeed, by the whirl as well as the elevation of his thoughts, made many a country Justice *see stars* ; and driven him to think amid the intellectual coruscations that the end of the world had now almost come.

To a professional mind, the spectacle of his forensic speeches was of heightened beauty, from the manifest *grasp* of the whole case which every division of the speech showed. A professional observer would appreciate the bearing and relation of every part of the fabric ; and thus would feel a pleasure beyond even the gratification derived from the rhetoric and the enthusiasm.

Still, to be fully appreciated by anybody, I think Mr. Choate should have been heard more than once ; his style was so extremely peculiar, that, like Pinkney, you were at first a little repulsed, and did not feel all his charm ; his ungainly action and unearthly screams, his jumping up and down, his labyrinthine sentences, perplexed and often baffled your criticism, till he had been heard often.

Of course he was imitated. Superficial observers were caught by his velocity, his vociferation, his verbiage, his sing-song tone, his queer manners, his twistings of face, his rolling gait and various awkwardnesses, not less than by the beautiful luxuriance of his curly locks, and his fingers ever tossing them into admired disorder. Many of these traits would have been fatal to anybody else ; but he put upon them the indescribable stamp of his own great originality, and converted them into elements of fascina-

tion. Caught, however, by the fantastic outside expressions of the rare genius within, young men copied his ways ; but only to excite mirth in proportion to the perfection of the counterfeit. Wherever Choate had been in his Court circuit, you could often follow his track by the confused and tangled heads of his copyists, their solemnly owl-like looks, careening shoulders and canting intonations. An old Judge said once, contemplating these phenomena, that Choate had quite ruined the manners of the young Bar. One young man, I remember particularly, threw himself his hair and his voice about with such a mimicry of the Choatean caprices, as to provoke the just criticism, that he exhibited "the contortions of the Sybil without any of the inspiration."

It never seemed to me that Mr. Choate set much value on Eloquence as an instrument of parade or display. The epidictic branches of oratory he did not cultivate ; he valued eloquence as a means to an end, not an end in itself. The rapt pleasure of *utterance* was not necessary to him ; he could have gained as much pleasure in himself and his mind, in other ways ; but he looked to oratory as an instrument of power ; an instrument for wielding and applying his vast intellectual resources. It was its imperial quality, not its æsthetic quality that he admired ; hence it happened that he cared little for Platform repute ; but if he lost a great case, it made him almost sick. Not to delight, but to delight in order to conquer, was his desire.

What to him was it that fine gentlemen said he was uncouth ! or that as he rushed about in his speaking with his thumbs in the arm-holes of his vest, snarling critics said he seemed like a wild animal in convulsions ! He cared not ; he held in his right hand fortune or poverty for clients who worshiped him as a god ; and he could give honor and

life, or dishonor and death to the objects of his favor or his frown. What, therefore, cared he—the Monarch of men's destinies in the Courts—for the captious or the applauding criticism of parade orators, who knew nothing of war? Theirs was the Dorian mood of soft recorders; his the proud, broken strains of the charge and the march. His sentences were trained to keep step to the music, not of the field but of the fight. And what, even also, if he had lost posthumous fame? He walked through life encompassed by admiring, supplicating,—nay, even cringing tributaries. No power on earth is more despotic than that which the great first-class lawyer has for the time being, over all within his sphere; his word is law, his acts the salvation of his clients, his fiat—destiny. Hardly does the Third Napoleon sit in his imperial robes more truly throned, than did Rufus Choate in his old gray coat, sit in the center of his Court Room empire, extending to all who had the happiness to depend on him, grace and gladness with a princely benignity.

His cases were his life and his horizon. Every day he was absorbed in somebody's business beside his own. He thought with that client, felt for him, and identified himself utterly with his fortune, regardless of every thing else beside; that client and that case, to his eyes, temporarily eclipsed the whole world. In these law scenes, therefore, he seemed to have an artificial, but yet, for the time, a real existence. Daily a new case, new client, and new witnesses surrounded him; and daily, like a voyager, he sailed away into the new clime of a new case, with new people and new talk. His powers of concentration and imagination were so great that this was almost literally true of him; he stayed at home, but *traveled* through all the ranks and scenery of humanity. In allusion to this entire surrender

of himself to his legal scene, some one wittily said, "Choate is rarely Choate, and he don't know himself, when he gets up in the morning, *who he is to be* ; but he takes up his papers, looks in the glass, and says to himself, 'Am I Mr. A or Mr. B to-day ?' and not until he has scrutinized his brief does he know how to baptize himself for that day ; then *he is* that person whom he undertakes to be."

It used to be a subject of profound wonder to me, to see him toiling and trying so mightily from day to day for comparatively little remuneration, and on little themes. Had he picked his cases, he would have made more glory and more money, with less labor ; but I soon found that action, tireless and ceaseless, was the law of his being ; that this incessant, and unflagging, and diversified toil, was the necessity of his nature. Now, he no longer labored for renown ; he had gained all his renown at fifty. Nor could he be thought to labor necessarily for money, for it is believed he left a respectable property ; but he labored for labor, and, in his later years, for that chiefly. When he had finished a great case, and everybody was tired out, and the jury that tried it was obliged to be dismissed, Choate would turn right round to the other jury and open a new case to them of equal magnitude and demanding an equal strain upon his powers, with all the freshness of a new comer.

I do not think he died of labor. He neither wore out, or rusted out : he died of an acute disease.

His *esprit de corps*, in regard to his professional practice, was chivalric : utterly bound up as he was, in victory in his own causes, still he would sacrifice a client and his own argument rather than leave an associate lawyer in a bad position before the jury and the world. I remember one case especially, a criminal case, when his junior got into a

disagreeable fuss with the Court, and with a witness also. Choate told me he disapproved of his junior's course of action; "but," said he, "I would not for the world have left him in the lurch, and I spoke as if I concurred with him, although I weakened myself before the jury by doing so." On another occasion, when a young lawyer was attacked rather severely by an official high in the administration of the criminal law of the Commonwealth, his senior associate was not thought by the Bar to have stood by him so promptly and gallantly as he might. A long time after the occurrence Mr. Choate showed reluctance to promote the good fortunes of that gentleman, the senior alluded to; and being pressed for a reason, said to me, "The only thing in the world I have against him is that he didn't stand by his own junior against Mr.—." He had nothing to do with the case himself, but thus long and seriously had he treasured up the memory of regret, for this neglect on the part of one of the members of his cherished profession.

But few, comparatively, of his legal arguments have been preserved. He was extremely reluctant to aid in their preservation. In the great Quaker case, in the fall of 1852, which filled Boston with broad brims and brown coats, one of the Quaker gentlemen was resolved to get Choate's speech and keep it. He employed a phonographist, and when the report was ready, he took it to Mr. Choate, and telling him how important the Quaker fraternity considered it, asked him to correct it as he would wish it to stand. Choate took it. When the gentleman called for it he had, *of course accidentally*, mislaid it. The applicant knew his man, and drawing forth another copy, "Well, then, Mr. Choate," said he, "I have two more, and if you don't correct it it shall be published just as it

is." Mr. Choate looked up laughingly. "You have indeed! Why, then, let me have it and I will correct it." He took it, and when the Quaker called again, he *had not lost it*. Thus it was that that report happens to be now in existence.

Yet it is quite impossible to convey in type the notion of how he said, what he said. The story is well known of Lord Chatham in Parliament, beginning a speech with "Sugar, Mr. Speaker;" the House laughed—the great man looked around and repeated the word "Sugar" with such effect that when at the third time he threw his bold glance upon them and exclaimed, "Who will laugh at Sugar now?" not a man moved a muscle—they sat transfixed and awed. I saw Mr. Choate do something like this once in court. He had been uttering a most extravagant simile, with passionate intensity, when the other party slightly smiled. Choate drew himself up to his full height, threw back his head, and, still standing square to the jury, revolved his blazing eyes back a little over the scene. "Ah," said he with distended nostrils and fierce energy, "no one laughs! no one laughs! Such is my cause; it carries all! No one laughs;" and his resolute eyes swept the scene with commanding glance. Strange as it may seem, no one did laugh. He himself was pale as death.

But such effects as these can only be alluded to, not described. You can tell when and how the lightning struck. No one can paint the burning bolt in its descent.

His greatest figures and images he often used more than once, at long intervals; and, like the oft-repeated good things in the rhetoric of Demosthenes and Cicero, they improved on each repetition.

But there was one phrase which always and everlastingly appeared, no matter whom he was addressing: that

was the phrase, "I shall have the honor to submit to you," or, "I was having the honor," or, "I was about to have the honor," etc. This *honorable* phrase was repeated and re-repeated everlastingly. Doubtless it often had no inconsiderable effect on weak and silly men, easily flattered.

No professional description of this gentleman ought to close without alluding again and again to his benignant temper. In fifteen years I never saw him really enraged; never heard him utter a petulant, ill-natured word, nor make a malicious remark. He had charity for all men. And the daily spectacle of his saintly serenity, sweetened all the Courts through which he revolved.

Driven to death by business, literally hunted from Court to Court, and street to street, and into his library, and almost into his bed, by besieging parties with their suits and their thoughts; sick himself half the time, from over-pressure of work; still he went patiently and quietly on, always at top speed—never "in a hurry;" like the stars, which haste not and rest not, but shine on for ever. If you went into his office to consult him, no matter how deeply busy he was, he received you always kindly and deliberately; never snarled or snapped at any interruption; and though perfectly simple and guileless in his manners, impressed his visitor, in five minutes, with the conviction that this *was* a great man before him.

I think his loss will be felt by the Bar who were his companions, and the youth who were his worshipers, more and more, for many years. He and Webster were the two most signally marked men in genius and in physiognomy that New England has ever given to the Union. I have studied their heads and faces when they were alive, and were sitting together, in Court and in private: since both are dead, I have studied their busts and pictures in close

proximity ; and certainly there was far more similarity in them than would readily be supposed. Their countenances were of similar complexion ; the large, strong nose very much alike ; the eyes essentially similar—Choate's larger, but with very much the same look as Webster's when he opened them wide ; the head not very dissimilar, save in the fact that Webster's was wide across the front, Choate's deep from front to back of the ear ; in each, therefore, the same spaciousness of the brain chamber, though gained in a different way ; and both of them, in the midst of all their splendor, were dark, somber, solemn men.

Choate's mouth, however, and chin were entirely different from Webster's, and he had the air of a more pensive person. But a sight of him, in action, was worth a very long journey. I think, if Thorwaldsen could have seen the head and the picture of Choate as he saw that of Webster, in the beauty and the literalness of sculpture, he would have been filled with a similar astonishment.

His genius, so rare, so great, so precious, ought not to be forgotten. Erskine still speaks in England to his brethren of the Bar, in his full-length statue ; and if Rufus Choate could be embodied by the cunning of sculpture, and stand up in the marble or the bronze, as we were all wont to gaze upon him, and so live for ever among us, it would honor not New England only, but America. Thirty States would admire his genius ; and all the generation that knew him would teach their children to love the name of this meteor man,—so mighty, yet so mild.

ANECDOTES AND SAYINGS.

A multitude of anecdotes are current about his practice in Court and out of Court, and very many of his sayings, witicisms, and observations. These, however, must derive much of their force from the way he said them, and from the memory of him in the mind of any one who now reads them. He used to utter his queer sayings with such ponderous deliberation, such imperturbable solemnity, that type and paper can do no more than hint at them.

At a time when the Peace societies were condemning the Military volunteer organizations somewhat harshly, some one in his office had a religious newspaper with a column of objurgations, commencing, "Christian soldier ! why do you bear that instrument of death against your shoulder ?" The paper was passing round the office, and one of the students undertook to read it aloud, beginning in a loud voice, "Christian soldier ! *why* do you bear that instrument of death upon your shoulder ?" Choate looked up from his writing in the further room ; "Why," said he, with a sly twinkle in his eye, "that's very easily answered. Why does he bear that gun upon his shoulder ? *It's because the statute prescribes it.*" The fun here lies in the application of the *literal* reason in answer to the high moral appeal ; but it may not be obvious to an unprofessional mind. It was, however, sufficient at the time to set the office and the entry in a conflagration of mirth.

I heard him, in an argument before a Legislative committee, describe the boundary line between Rhode Island and Massachusetts in this language : "Why," said he, "it is like starting at a bush, from thence to a blue jay, from thence to a hive of bees in swarming time,

from thence to three hundred foxes with firebrands in their tails."

Two or three years ago, during a season of illness, Mr. Choate was visited by one of his friends, who urged upon him the importance of paying more attention to his health. "Sir," said the visitor, "you must go away; if you continue your professional labors thus, you will certainly undermine your constitution." Mr. Choate looked up, and with that grave irony and peculiar twinkle of the eye which were so marked and indescribable when he jested, said, "Sir, the constitution was destroyed long ago; I am now living under the bye-laws."

Coming into a lawyer's office one day, he saw a close winding staircase leading up to the consulting room. His eye scanned its cork-screw curvings for a moment; then turning to the lawyer, his look prophesied a witticism, as he quietly observed, "How drunk a man must be, to go up those stairs!"

In a divorce case, he was arguing against the probability of guilt. "They were playful, Gentlemen of the Jury, not guilty. After the morning toil, they sat down upon the hay mow for refreshment, not crime. There may have been a little youthful fondling—playful, not amorous. They only wished to *mitigate the austerities of hay making.*"

Many passages of interest between him and the Chief Justice are floating round Court street in lawyer's talk; some of them true, some of them problematical.

In a case, I believe in Essex county, where an old man, white-haired and feeble, was a party, Choate gave reins to his imagination. He poetized upon the aged and venerable object of their sympathies, and at last quoted in full a touching passage from King Lear. The Chief raised his mighty and—with reverence be it spoken—shaggy head,

and glowered upon the poet. "Mr. Choate," he broke out, "this is a dry question of law, and you mistake if you suppose the Supreme Court is to be influenced by any such considerations as you appear to be suggesting." Choate paused a little,—fussed with his papers,—then murmured out audibly enough for the tittering Bar to hear him, "The Chief Justice isn't much of a lawyer, but what a polite and amiable man he is!" Considering that the gruff Chief is, as a lawyer, worthy to rank with Theophilus Parsons, the rejoinder was very sarcastic.

On another occasion when the Chief growled at him rather savagely, he turned his head back to the Bar gathered behind him—for he would not say a sharp thing directly to a Judge,—and muttered slowly and soliloquizingly, "We venerate the Chief Justice, not for any beauty of form or feature;—but for the supposed hidden intelligence within." To appreciate this, one should have known Choate; and imagine him muttering this audibly to himself, as if he was trying to account to himself, for the respect he felt for the grim Chief notwithstanding his savageness. For I know he did truly honor, appreciate, and admire Chief Justice Shaw.

For a long time the story ran current that at a law club Choate gave as a sentiment, "The Chief Justice! We contemplate him as the East Indian does his wooden-headed idol—he knows that he is ugly, but he feels that he is great."

In the famous Methodist Church case, argued at New York within a few years, he made a memorable and dazzling argument. On leaving town next day, his clients' agent gave him \$2000, and told him never to abandon the case while a Court remained to which it could be carried. "Well," said he to a friend who stood by, "I declare these

religious people fight harder and pay better than any clients I ever knew."

In a trial for divorce, in Dedham, a leading character in the case, I believe one of the parties to it, was a queer sort of half-cracked, hair-brained individual; and during the trial Choate stopped in his musing walk up and down the Court room more than once to observe him, saying to his associate, "I don't quite make out whether this man is fool or knave; he seems a sort of *miscellaneous* person." When he came to comment on him in the argument, he said, "This man seems to me, your Honor, to have a sort of—*incipient*,—*intermittent*,—*fly-madness*." The way he brought out these successive qualifying adjectives produced great hilarity in all who had watched the progress of the case.

Every one at the Suffolk bar knows his famous description of the "second-hand harness" which was the subject of suit. Holding up in his hand a part of the harness, Mr. Choate said, "To be sure, gentlemen, this harness hasn't upon it all that gloss and glitter which takes the eye of the vulgar crowd; but I put it to you, as intelligent jurors, acquainted with the ordinary affairs of life, whether it isn't a safe, sound, substantial, suitable, second-rate, second-hand harness." A critic of his has quoted this anecdote, but expresses the opinion that it is a fib. It is not so considered, however, I think, by the lawyers generally; for it is exactly in the style of his exaggerations when he was excited, even on the most trivial subject; and anybody who knew him well, can picture to himself exactly the manner in which he would shoot out every one of these *secondary* adjectives. The same critic, just alluded to, adds another little anecdote of a different kind: "A friend of mine, speaking to him of Macready's art in acting, said

that a person once heard a man crying "murder," for two hours in succession, in the room under his own at a hotel. On inquiry he found it was Mr. Macready practicing on the word, to get the right agonized tone. 'If a man,' said Choate, 'should cry murder, for two hours, under my window—I would commit it!'" The reviewer goes on to observe very justly that "sentences cut apart from the main body of one of his productions can only suggest his manner through the process of caricature. Thus," he says, "we recollect that an honest master mason, in one of his arguments, rose to the dignity of a 'builder and beautifier of cities.' In another he represented the skipper of a merchant vessel, who had been prosecuted by his crew for not giving them enough to eat, as being busily studying some law book, while passing the island of St. Helena, to find out his duty in case the vessel was short of provisions. 'Such,' said Mr. Choate, 'were his meditations as the invisible currents of the ocean bore him by the grave of Napoleon.' A witness once testified, in reference to one of his clients, that he had called upon him on Friday evening, found him crying, and on asking him what was the matter, received in answer, 'I'm afraid I've run against a snag.' This was rendered by Mr. Choate somewhat in this way: 'Such were his feelings and such his actions down to that fatal Friday night, when, at ten o'clock, in that flood of tears, his hope went out like a candle.' These instances convey an idea of the process by which Mr. Choate makes 'strange combinations out of common things,' but a little more accurate than an intentional parody of his manner."

An anecdote of a constable's return, and his comment upon it, has been told before, but not in full. It was an action of replevin, and the constable was ordered to attach

certain goods according to the schedule furnished him. He returned the writ into court, with the schedule attached and the goods. The return was after this fashion: "On this day, *having* attached this, *having* taken that, *having* done the other thing," etc. Choate objected to this return of service; on the ground, first, generally, that it was bad. The Judge remarked that, though inelegant and ungrammatical in its structure, the paper still seemed to be good in a legal sense. "It may be so, your Honor," replied Mr. Choate, "but it must be confessed that he has greatly *overworked* the participle."

When the laugh which greeted this sally had subsided a little, he took the second objection; which was, that the officer had not returned the same goods as those in his schedule. His schedule, for example, said gingham; he returned cassimeres, etc. The old Chief took up his copy, and read along, comparing in his copy the schedule and the return. At last he came to one item which was right in his copy; and the copy before him was the original—Choate had in his hands a transcript of the original—"Very well, Mr. Choate," said he, "if he has taken one article according to the schedule it will support the writ." "Yes, your Honor, but he has not one." "Certainly he has; here is one. He is ordered to attach shirtings, and he returns that he *has* attached shirtings." "No!" replied Choate, respectfully, but firmly; "he is ordered to attach shirtings, and he returns *sheetings*; a *very, very* different thing." "No, Mr. Choate; look at your paper and I will look at mine." So the old Chief buried his great head in the papers a moment, and Choate spelled out his again. A pause ensued. "Well, Mr. Choate, you see you are wrong," was the next remark of the Bench, somewhat testily. "No, sir," persisted Choate, "I see I am right." The Chief, by this time

quite indignant, took the paper in his hand, and, looking on it and standing up, roared out each letter in portentous tones, "S-h-i-r-t spells shirt, does it not, Mr. Choate?" Choate saw at once that the mistake must have arisen from an error in copying his transcript from the judge's original. "Well, your Honor," said he, with a look of great gravity, "I should have supposed it did spell shirt, without an express *decision* of the Supreme Court of Massachusetts upon it."

The Whig Review of January, 1847, in an article upon him, adds another example from his speeches, which happily illustrates his humor and fun. After speaking of a grotesque image which Mr. Choate used in his speech on the Oregon Question,—of the Legislature putting its head out of the window, and in a voice audible all over the world, speaking to the negotiators of the pending treaty, bidding them God speed, but insinuating that if they did not give up the whole subject in dispute, it would be settled by main strength,—it refers to his picture of a New England summer, introduced in his second speech on the Tariff, to illustrate the idea that irregularity is not ruin.

"Take the New England climate, in summer; you would think the world was coming to an end. Certain recent heresies on that subject may have had a natural origin there. Cold to-day, hot to-morrow; mercury at eighty degrees in the morning, with wind at south-west; and in three hours more a sea-turn, wind at east, a thick fog from the very bottom of the ocean, and a fall of forty degrees of Fahrenheit; now so dry as to kill all the beans in New Hampshire; then floods carrying off the bridges of the Penobscot and Connecticut; snow in Portsmouth in July; and the next day a man and a yoke of oxen killed by lightning in Rhode Island. You would think the world was

twenty times coming to an end ! But I don't know how it is : we go along ; the early and the latter rain falls, each in its season ; seed-time and harvest do not fail ; the sixty days of hot, corn weather are pretty sure to be measured out to us. The Indian Summer, with its bland southwest and mitigated sunshine, brings all up ; and on the twenty-fifth of November, or thereabouts, being Thursday, three millions of grateful people, in meeting-houses, or around the family board, give thanks for a year of health, plenty, and happiness."

A few years ago, a Yankee "down easter" tried his hand at describing Mr. Choate in his own down-east style. It is of course a caricature, but making due allowance for that, it gives a notion of this marvelous man, as seen by one with an eye for the ludicrous.

Here is our greatest legal orator, as seen with a down-east eye : "Rufus Choate is a picture to look at, and a crowder to spout. He is about seven feet six, or six feet seven, in his socks, supple as an eel, and wiry as a corkscrew. His face is a compound of wrinkles, 'yaller janders,' and jurisprudence. He has small, keen, piercing black eyes, and a head shaped like a mammoth goose-egg, big end up ; his hair black and curly, much resembling a bag of wool in 'admirable disorder,' or a brush heap in a gale of wind. His body has no particular shape, and his wit and legal 'dodges' have set many a judge in a snicker, and so confounded jurors as to make it almost impossible for them to speak plain English.

"Rufus is great on twisting and coiling himself up, squirming around, and prancing, jumping and kicking up the dust, when steam's up. His oratory is first-rate, and his arguments ingenious and forcible. He generally makes a ten-strike—judge and jury down at the end of every sen-

tence. He is great on flowery expressions and high-falootin 'flub-dubs.' Strangers mostly think he is crazy, and the rest scarcely understand what it is about. He has been in the Senate, and may be, if he has time to fish for it, President of the United States. He invoices his time and elocution four thousand per cent. over ordinary charges for having one's self put through a course of law. Rufus Choate is about fifty years of age, perhaps over. He is considered the ablest lawyer in New England, or perhaps in the United States."

Caricatured as this is, the down easter evidently appreciates the greatness and originality of his power.

In a suit for wages by a young woman who worked in a milliner's shop, he concluded a powerful appeal by saying, "Was it not enough, Gentlemen, that she should live in that atmosphere of silks, satins, ribbons and lavender water,—without being cheated out of her wages?"

Speaking of the democratic administration in the days when the Whig party still lived, he said, "Well, it is as I expected. Put *you know who* on horseback, and he'll ride *you know where*."

When, in 1847, he argued for a proper license system of the sale of spirituous liquors, before a committee of the Boston Common Council, he was in the prime of his power. A satirical paper at that time gave the following description of him, which, in all its burlesque, is nevertheless highly panegyrical: "As he shot his piercing, resolute eyes hither and thither, drew on that solemn face, and poured out those deep tones of awful solemnity, rolled up those tremendous climaxes, raised his commanding form upon his toes, came down upon his heels like two pavers' rammers, and shook the whole firmament of the Council chamber like an earthquake, we could not but imagine what

a sensation he would have produced as a revival preacher, or as Richard the Third on the stage."

This newspaper reference to Richard the Third is very apposite.

It always seemed to me he might have been trained to triumph in tragedy. Dark faces are deficient in delicate expression, but for intensity of look, and great and distant effects, are far better than lighter or blonde faces. I have heard a poetic observer and critic of men say, that two men only of this generation had ever been able to put fire into his brain ; one was Edwin Booth, the other Rufus Choate.

But it was in the mixture of the grave with the gay thoughts that his humor often glanced the brightest. About the time that Minot's Ledge Light-house, in Boston harbor, was carried away in a terrific winter storm which lasted a day or two, he happened into the Athenæum Library; and gazing from its ample windows on the broad open space before him, flanked by Park street church; "Well, Mr. F——," said he to the librarian, with a smile, "after all this blast, there stands my old friend, Park street steeple, unshaken, intact, unterrified." Then his glance fell on the wide intervening graveyard, his smiling eyes dropped, his voice sank into a rich, mellow, mournful tone, and with much emotion, he continued, "Ah, Mr. F——, the *dead are safest*, midst all this hurly-burly!" The thoughts and the manner in the two clauses of this sentence would have brought inevitably to any one present, first a smile, then a tear.

In a speech at Salem, in 1848, after many of his old Whig party had gone over to the Free Soil party, he gazed around the great crescent of people before him, and concluded one of his opening paragraphs emotionally thus: "Of the great men I knew here, and loved, some of them

are dead ;” then pausing an instant, long enough for all to remember that some of them were alive, but lost to the party, he continued, “Aye, some of them are dead—and some of them are *worse* than dead !”

A divorce case, argued about 1841, where the parties lived in South Boston, is still remembered by the Bar as giving occasion to some extraordinary feats of legal legerdemain by Mr. Choate. Bradford Sumner was on the other side, and his feelings were ardently enlisted in the cause. I remember he caused great mirth among Bostonians by calling South Boston “that Rob Roy neighborhood.” One of the chief witnesses to prove the alleged guilt by reason of which the divorce was sought for, on the part of the husband, was a woman named Abigail Bell. Mr. Choate was for the husband and the divorce. On cross-examination, Mr. Sumner asked this witness, “Are you married ?” “No.” “Have you children ?” “No.” “Have you a child ?” Then there was a long and distressing pause. The question was repeated—“Have you a child ?” At last the monosyllable “yes” was fully uttered by the witness. Instantly the counsel ceased the cross-examination. Of course her testimony, where there was a conflict of testimony, was immensely damaged in the eyes of the jury, by this fact confessed of the maiden mother. Choate did not ask any question in reply or explanation, and she stepped down from the witness-stand a blackened woman.

When, however, he came finally, in the course of his argument, to reply to that part of his case which rested on her evidence, he took her character in hand. The Court room hushed the moment he said, “Abigail Bell’s evidence, Gentlemen, is before you.” Raising himself up and with great firmness, he went on—“*I solemnly assert there is not*

the shadow of a shade of doubt or of suspicion on that evidence or on her character!" Everybody looked stupefied with astonishment at these words. Solemnly he proceeded, "What though in an unguarded moment, she may have trusted, too far to the young man to whom she had pledged her untried affections; to whom she was to be wedded on the next Lord's day; and—*who was suddenly struck dead at her feet* by a stroke of lightning out of the heavens!" Then he made another of his tremendous pausings, and snuffings of the air, and his strange dark eyes lowered over the jury, while they took in this novel and extraordinary explanation. The whole Court room felt its force, and lighted up as if a feeling of relief had been experienced by every one present. There was a buzz, a stir, a universal sensation—and then again, Choate rolled along under full headway.

As a lawyer, he had a right to suppose any explanation of the damaging fact which would account for it consistently with innocence;—and this was *his hypothesis*.

Mr. Sumner's argument to the jury was very able; I well remember, although it is sixteen or seventeen years ago, how he told me he had laid awake all night thinking it over. But Mr. Choate won the case.

In a well-known case against the Old Colony Railroad, when plaintiff sued for damages for injury by being run down by their train, Choate called some boys as witnesses. They swore they were shooting coots near by the crossing when the accident occurred; and that the train did not make the proper signal for a crossing. The defense called the Selectmen of Marshfield to prove that *coots did not fly in August*; and therefore the boys could not have been there shooting them, as they swore, in that month.

Choate, as he approached their testimony in his argu-

ment, said, "I do not suppose this boy was ornithological extensively. They call the Selectmen to prove there was no game for him there. The Selectmen! Why hav'nt they called the *sportsmen* of Marshfield? Why hav'nt they called those men who have learned this thing as they have learned other things, *from great example!*—'to throw the line, to point the tube, to recognize the game?'" Of course the allusion here, was to Daniel Webster's neighboring residence of Marshfield; and the conversational instructions he had been so fond of giving to his farmer friends. In point of fact, too, I believe the Selectmen were wrong, and the sportsmen would have corrected them; for although not frequent, still—coots *do* fly in August.

Mr. Choate made a great passage in the case of *Shaw vs. Worcester Railroad*, which was one of the last trials of much popular interest that he was engaged in. The person injured by the collision of the cars with his wagon, which was the subject of the suit, was said, by a witness, to have been intoxicated at the time he was driving. On cross-examination the witness said he knew it, because he leant over him and perceived his breath, which seemed as if "he had been drinking gin and brandy." Commenting on this with great power, Choate said, "This witness swears he stood by the dying man in his last moments. What was he there for?" he shouted out; "Was it to administer those assiduities which are ordinarily proffered at the bedside of dying men? Was it to extend to him the consolations of that religion which for eighteen hundred years has comforted the world? No, gentlemen, no! He leans over the departing sufferer; he bends his face nearer and nearer to him—and what does he do! (in a voice of thunder) What does he do?—*Smells gin and brandy!*"

I think this, as he worked it out, was the most effective anti-climax ever achieved in our Courts.

In the Dalton divorce case he characterized the letters of the lady to her husband as being like "the Eclogues of Virgil—one long sigh for peace ; they are one long song of 'Home, sweet Home;' and him, her husband, its destined idol."

In an insurance case, tried in the Supreme Court, Mr. Choate's vessel was alleged to be unseaworthy, and the evidence disclosed a plank started from her sides. It became pertinent for the orator to sear this place up, and he closed one of his long paragraphs with these words : "And, Gentlemen, all this ship needed to set her right, was two copper bolts, two wooden trennels—nay, two old candles."

It is impossible to describe the convulsions of laughter which followed this.

As a matter of course, a style so extravagant as his was very open to ridicule. Jeremiah Mason is said to have opened an argument to a jury, after Choate, who was on the other side, had piled his frenzy very high before them, by saying, in his blunt, homely way, "Gentlemen of the jury, I don't know as I can *Gyrate* afore you as my brother Choate does; but I want to just *state a few pints*." The contrast between the two styles was at first somewhat damaging to Choate.

In another case, the opposite counsel to Mr. Choate—a rough man—made great laughter by closing his hostile description of Choate's line of argument with the declaration, that he thought "it was—altogether too big a boo for so small a calf."

But Mr. Choate bore such momentary reverses with unflinching sobriety. His look under them seemed to indicate always that nothing could touch him; and he only

felt regret that so much wit should be *wasted* by his adversary.

A little sally of wit in regard to Mr. Choate, by Oliver Wendell Holmes, the "Autocrat of the Breakfast Table," is worth preserving. When Choate was obliged to disappoint Dartmouth College in not delivering a promised Commencement address, the little Autocrat was sent for as a substitute. Going up in the cars, some one asked, "Who is to fill Mr. Choate's place to-morrow?" The lively little Doctor jumped up, and coming forward said, "Nobody's going to *fill* his place. I'm going to rattle round *in it*, a little while."

At the time of Mr. Choate's great speech for Buchanan, in Lowell, there was a sudden settling of the floor of the hall where they were. A Lowell gentleman, well known as a lawyer and politician, volunteered to go out and examine the supports underneath. He did so; and, to his horror, found them in such a state that if there should be the least rush of the audience they would inevitably give way, the roof and floor would go together, and all be involved in a common ruin. With great fortitude he went quietly back; and, to prove *there was no danger*, walked the whole length of the crowded hall up to the platform where the speakers and president were.

As he passed, Mr. Choate leaned down and asked him if he found danger. The gentleman, keeping his face perfectly unmoved, so as not to frighten others, whispered into Choate's ear with characteristic abruptness, "If I can't get this crowd out quietly, we shall all be in h—ll in five minutes." As might have been expected from so blunt and terrible a communication, Mr. Choate's face instantly became ashy pale; but he controlled himself and sat perfectly steady.

The gentleman mounted the stage, assured the people there was no real danger ; but to guard against the mere possibility of danger, he advised them to withdraw *quietly*, very quietly, to the open air, where the speech would go on. In five minutes the hall was clear.

Dreadful as had been the moment's shock to his feelings, Mr. Choate's humor did not even then desert him ; for as he stepped from the hall himself, he said to his friend who had made the announcement to him, " And did you *really* think, my friend, just now, that I *was bound for the same place with you ?*"

An anecdote of him told me by one of the Common Pleas judges, as occurring in 1834, illustrates his prodigious resolution. His case was argued two days. In the afternoon of the first day he seemed sick and feeble. But on the morning of the second day, he looked so bright that my informant remarked to him, " You seem much brighter this morning, Mr. Choate." " O yes," was the prompt reply ; " I've got a blister all across my stomach. I am *excoriated entirely*, and *feel quite smart*."

In another case in which this same judge was of counsel, in 1845, Mr. Choate was so weak, and had such a vertigo, that he was compelled to hold on by both hands to his table, in order to steady himself while he spoke. Yet even thus he talked two hours ; then got five minutes' recess ; went to his office, took an emetic ; came back and finished the whole argument.

It was either in this case or another, where this same gentleman, my informant, was with him, that in a sudden lull and break in the case, while the Court was waiting, Choate leaned back in his chair and discoursed to his associates for an hour, upon the various extant editions of

Cicero; going into details and even verbal criticisms, thus extemporaneously.

In his speech in defense of the Judiciary in the Constitutional Convention, he was answering a direct appeal which had been made to him, as to whether he had not heard particular acts of the Judges commented on very unfavorably. He was proceeding, speaking very slowly and solemnly, "Sir, I have known and loved many men, many women"—(here there was a subdued titter in the house; he raised himself up erect, his eyes flashed with a sublime ardor, as he repeated in a most solemn tone)—"aye, many beautiful women, of the living and the dead, of the purest and noblest of earth or skies; but I never knew one, I never heard of one, if conspicuous enough to attract a considerable observation, whom the breath of calumny or of sarcasm always wholly spared. Did the learned gentleman who interrogates me ever know one? 'Be thou as chaste as ice, as pure as snow, thou shalt not escape calumny.'"

The effect of his truly majestic delivery of these words was most solemnizing. No one smiled again. It awed, sobered, silenced the whole house.

It would be quite impossible, to garner up all his telling phrases which were remembered and current in the talk of the Bar and the world. His statement, so epigrammatic, at the New England Dinner, produced lasting effects: "The Puritans founded a church without a Bishop, a state without a King." His words about the Bible were memorable: "What! banish the Bible from our schools? Never, while there is a piece of Plymouth Rock left large enough to make a gun flint of!" Again, at the convention which nominated General Scott for President, he was for Webster; and he said the Scott men wanted no platform, but "a letter in every man's breeches' pocket."

His description is hackneyed but famous, of the party that, as he said, "Carry the flag, and keep step to the music of the Union."

He spoke of a certain namby-pamby minister as "a man milliner."

Describing some one's conduct, he said it was "cool ! cool as a couple of summer mornings."

In one of the newspaper notices drawn forth by Mr. Choate's death, the following passage occurred. I quote it because it is a fair specimen of the style of criticism upon him of those who, from mistake or ignorance, misjudged him :—

"As a lawyer, he seemed to prefer cases the most devoid of substantial merit, not because he had any natural affinity for depravity, but for the opportunity afforded of exercising his legal ingenuity and displaying his unique eloquence. Even at the bar of Massachusetts, indulgent as it naturally was to the faults of its distinguished leader, his reputation suffered from the superfluous zeal he manifested in clearing Tirrel, the murderer and incendiary, on the preposterous theory of somnambulism, as well as from other efforts of a similar kind. Prone as his hearers were to exult in the splendid exhibition, they could not forget occasionally that the lightnings of his genius were brandished with little regard to consequences, and that it was comparatively a matter of indifference to the great actor of the scene whether they purified the moral atmosphere by vindicating the cause of truth and justice, or struck down the fair fabrics of public virtue and public integrity."

Now this is grossly unjust to Mr. Choate's memory, and is not true. The only cases he ever did refuse were criminal cases. But this Tirrel case, in particular, I happened to know from him something about. The defense

in that case, as he told me himself, was brought to him by the women and friends of Tirrel's family, who told him, with tears, that Tirrell was a somnambulist, and *upon that ground* they wished him defended ; and they besought him, almost on their knees, to save a man who had killed his mistress *in his sleep*. If ever a man has a right to a defense, it is when he is on trial for his life ; and if ever a lawyer has his greatest opportunity for usefulness, it is in manfully defending one whom public clamor has tried and convicted long before law and Courts have tried him. Then it is, amid the howling of the mob, that the lawyer is to stand forth unterrified between the mob who would Lynch the victim, and the criminal who has not been tried ; and it is for the servant of the law to cry "Peace," while sovereign Law examines all the record.

But to show manifestly and for ever how falsely Mr. Choate's character has been impugned for his connection with this case, I have collected a full account of the case ; chiefly by the aid of the gentleman whose student reminiscences of Mr. Choate were appended to a previous chapter of this book. The argument never was reported in full. But to this present inquiry, the style of the argument is not material. The facts of the case, the opinions of the judges, the surrounding circumstances, are all important. They show that Tirrell, had he been hung, would have been hung in defiance of the great Anglo-Saxon principle of law, that no man shall be condemned to die while he is not *proven guilty* beyond a reasonable doubt. Tirrell never was so proven ; and I believe fully that Mr. Choate died in the sincere belief, that he killed his victim in a fit of unconscious sleep-walking, although it was never proved that he actually killed her at all.

I am interested to draw the attention of all who feel at-

tracted toward Mr. Choate's memory, to this case; because it was this Tirrell case from which the idea chiefly took rise that Mr. Choate was somewhat unscrupulous in his defense of criminals. But there never was a greater misrepresentation. Whatever he was in the earlier stages of his career, after he grew to maturity, he was very careful about his defenses on the criminal side of the Court. On the civil side of the Court, as I have previously described him, he took every thing, and fought to conquer; but on the other side, he felt his responsibility to the public. When Professor Webster's murder case was depending, his friends applied to Mr. Choate to defend him on his charge of homicide. *He refused the case.*

This Tirrell case has never been fully understood by the public, though by the profession it has been entirely and justly comprehended. There never was a more righteous acquittal on a charge of murder, *under our law*, than that of Albert J. Tirrell. Judge Wilde of the Supreme Court was accustomed to express his entire approbation of the verdict, and I have reason to believe the whole Court were satisfied with it.

Mr. Choate told me several years ago that he never thought of such a line of defense as somnambulism, but the friends of the prisoner came to him with tears, and he yielded to them.

The day after the second trial of Tirrell, which was not for murder but arson, where the evidence was substantially the same as in the first, I saw Mr. Choate in his study. He was lying down, deadly sick with nausea and exhaustion. The jury were still out, and it was understood had been divided all night. I asked Mr. Choate if he feared their verdict. "No," said he; "they may disagree, but they never can convict him *according to our law.*"

As I have often felt indignant at the comments of the ignorant upon Mr. Choate's conduct in this cause, it is a gratification to me to be enabled to present the following statement of the facts ; and the line of argument pursued in it is also here added. The statement has been carefully prepared from original sources of information.

THE ALBERT J. TIRRELL CASE.

Perhaps no criminal case ever attracted more attention, or occasioned more comment upon its defense, than this. Albert J. Tirrell was indicted and tried in March, 1846, in the county of Suffolk, for the murder of Mrs. Bickford, on the morning of October 27, 1845, in the house of one Joel Lawrence, in Mount Vernon avenue, near Charles street, Boston.

Tirrell belonged to Weymouth, and was respectably connected. He had a wife and family there ; but had led an irregular life for some time, and was living at this time with Mrs. Bickford, who had left her husband. In fact, Tirrell was at this very time under indictment for criminal connection.

Tirrell was only twenty-two years old, and the deceased twenty-one.

The trial was commenced March 24, 1846, before Justices Wilde, Dewey and Hubbard, of the Supreme Court. Mr. Choate and Messrs. Amos B. and Annis Merrill had been assigned as counsel for the prisoner, and the prosecution was conducted by S. D. Parker, Esq., county attorney for Suffolk.

The case presented by the government, and developed by testimony, was substantially as follows : The house, in which the body of the deceased was found, was occupied by Joel Lawrence and family, and was of bad reputation. On the evening of the 26th of October, which was Sunday, at

nine o'clock, Tirrell was seen in the same room with the deceased, and was not afterwards seen in the house, which was locked up and closed for the night. About four o'clock in the morning of the next day, Monday, 27th of October, Mrs. Lawrence and another inmate of the house, heard a noise in Mrs. Bickford's room, then a fall, and about half an hour after heard a person go out of the door. Mr. Lawrence, who occupied a different apartment, was awakened between four and five, Monday, A. M., by a person going out of the door, and a noise, as of a groan or inarticulate sound in the yard, and soon after by the cry of "fire" from his wife. This peculiar cry outside of the house, which followed the opening of the door, was distinctly remembered by Lawrence and his wife and another inmate of the house.

At about five o'clock, or somewhat after, a fireman, who heard the alarm, came to the house, and, with Lawrence, proceeded to Mrs. Bickford's room. The fire was still burning, and was put out by the fireman; Lawrence giving little or no aid, and appearing reluctant to go into the room, saying that the fire was out. On the floor of the chamber was found the dead body of Mrs. Bickford, the throat cut from ear to ear, an open and bloody razor on the floor, and blood on the floor and bed. A mattress and straw bed were partially burned, and there were matches in the straw bed. The wash bowl contained blood and water, and one ear ring of deceased was torn from the ear. Part of the apparel of the prisoner was also found in the room.

The government undertook to call as witnesses all the inmates of the house; but there was no testimony touching the prisoner's presence in the house after nine o'clock on Sunday evening, and nothing relative to the

appearance of the room from four to five, A. M., of Monday.

Between four and five, A. M., of the same day, Tirrell called at Fullam's stable, in Bowdoin Square, for a conveyance to Weymouth, saying "he had got into trouble, and wanted me to carry him off; that somebody had come into his room and tried to murder him."

At five and a half, A. M., he called at a house occupied by one Head, in Ridgeway Lane, not far from Fullam's stable, to get two handkerchiefs. His appearance was described as peculiar and wild, and like that of a person in a stupor, when at this place; and the sounds of his voice were like a distressed groan. A man from Fullam's stable drove the prisoner to Weymouth, where he remained; and thence wandered about until he was finally arrested in New Orleans.

An inmate of Lawrence's house had heard loud conversation between Tirrell and Mrs. Bickford in their room on Sunday evening.

Such was the case against the prisoner. It can not be denied that there was a strong feeling against Tirrell in the community. The case was one of startling interest, resembling that of Robinson for the murder of Helen Jewett, which took place in New York about ten years before this time.

The defense was opened at great length and with much ability by the junior counsel, Mr. Annis Merrill. Many points were taken in behalf of the prisoner. It was urged generally, that there was no positive evidence affecting him, and that the testimony relied upon by the government to convict him was circumstantial, and from the infamous inmates of a bad house, and ought not to be credited. There was no evidence that Tirrell was in the

house after nine o'clock of the 26th of October ; and no evidence concerning the room and its appearance before the fireman and coroner examined it ; while, according to the government case, the murder took place at least an hour before ; that there was no motive for this alleged act by prisoner ; and there was a violent improbability of his being the murderer ; the prisoner was devotedly attached to the deceased ; that suicide was the more reasonable supposition, from the bad character and habits of the deceased ; that if the act was done by prisoner, the same was not done by him in a conscious state, and in his waking hours.

From the evidence in behalf of the prisoner, it appeared that he was strongly attached to the deceased, and that she was of a violent temper ; once or twice had taken laudanum ; and was in the habit of keeping razors, and various weapons, in her possession. Seven witnesses testified that the prisoner had been in the habit of getting up and walking in his sleep, from the age of four or five years ; and while in this state he would sometimes commit acts of violence, and utter a peculiar noise or groan. Three medical gentlemen of the highest character, upon hearing this testimony, gave their opinion that the phenomena described were those of that species of disease treated in medical books as *Somnambulism*, the subjects of which are as unconscious as the victims of any insane delusion.

The peculiar noise heard in Lawrence's yard on the morning of the 27th, and described as uttered by the person who went out of his door between four and five A. M., and the peculiar sounds uttered by Tirrell on the same morning, as described by Head, the prisoner's counsel contended,—and the medical testimony sustained them,—

might be the sounds of a person in the state of somnambulism. The medical witnesses were also of opinion that the deceased might have cut her own throat, and then jumped from the bed upon the floor.

The government called no medical witnesses in rebuttal.

Mr. Choate closed for the prisoner in an argument of wonderful ingenuity and brilliancy ; and was followed by Mr. S. D. Parker for the government in one of those terse and cogent addresses which were peculiar to this able prosecuting officer.

It is understood that Mr. Choate preserved a very full copy of this speech, which was one of his ablest efforts, and which it is hoped may be given to the public.

Nothing could be more happily expressed than when, in his exordium, he alluded to the effect of the verdict and the absence of all hope of pardon :

“ Every juror, when he puts into the urn the verdict of Guilty, writes upon it also,—Let him die.”

And then what a graceful and appropriate peroration, in a cause of life or death, were these words :

“ Under the iron law of old Rome, it was the custom to bestow a civic wreath on him who should save the life of a citizen. Do your duty this day, Gentlemen, and you too, may deserve the civic crown.”

The Charge to the jury was delivered by Mr. Justice Dewey, who gave a clear statement of the case, and their duties. He enlarged somewhat upon the various points of defense taken by the prisoner's counsel ; and on the subject of “ somnambulism,” instructed the jury that the same principles would apply as to a case of insanity. If the act was proved to have been committed by the prisoner, and that he was in this state at the time, it would

be a good defense. The Charge was clear and impartial, and was certainly favorable to the prisoner, in fairly committing to the jury all his points of defense, as matters for their inquiry and determination.

The jury were absent in deliberation *about two hours*, and then returned a verdict of "not guilty."

To a question by Mr. Parker for the government, the jury stated "that they had formed their opinion on general grounds, and *had not considered the question of somnambulism.*"

Tirrell was again put to the bar, January 11th, 1847, on an indictment for arson, before Judges Shaw, Wilde, and Dewey. The facts developed were substantially the same as at the trial for murder; but the government introduced a new witness, who swore that she passed the night before the alleged murder, at Lawrence's house, heard a person going out between four and five A. M. of the 27th of October; looked out, and saw that it was Tirrell.

Chief Justice Shaw charged the jury on the various points of defense and the previous charge of his associate, Mr. Justice Dewey. He instructed the jury in view of the character of the government witnesses, and the discrepancy of testimony, that the testimony of the Lawrences and the new witness should not be relied upon, unless corroborated by other evidence.

The jury returned a verdict of "not guilty."

Tirrell was then sentenced to State prison, on the indictment then pending against him for adultery.

He is now at large, as is supposed.

The trial of Tirrell must rank among the celebrated cases of our country, not only for the great interest it caused at the time, but for the extraordinary ability displayed in the defense.

It will always be remembered, also, for the connection which Mr. Choate had with it, as one of the counsel for the prisoner. A great many very excellent persons have pronounced their judgment of condemnation upon the eminent advocate who defended the prisoner, as one who had misused his great talents in securing from justice a bad man by a frivolous defense. Some of the clergy have occasionally, in their notices of the profession, alluded to this case, and passed not very charitable comments upon the conduct of lawyers who defended bad cases. But such comments are unwarranted by the facts of this case.

The very word somnambulism, in connection with this case, has been treated by some as bordering on the ludicrous. Such persons, we feel sure, have never examined into the case. From the sketch which has here been given of the trial, it will be noticed that the prisoner was acquitted, because the government failed to make out a case against him ; and *Mr. Choate had power to make the jury see this.*

In a case where human life is at stake, the law gives the prisoner at the bar the benefit of a doubt ; and the doubts, the uncertainties and the mysteries of this case, saved the prisoner. As intelligent a jury as ever sat in a Suffolk tribunal, presided over by one of our oldest North-End mechanics, *were not satisfied* that Tirrell was the murderer of Mrs. Bickford ; and they arrived at this conclusion without examining the question of somnambulism. Surely it is a legitimate duty of counsel to point out and establish the defects in the government case under the eye of the Court. These defects in proof, the Court acknowledged to be proper subjects of comment, and entirely for the jury.

If the case had been otherwise, and the prisoner had

been acquitted, because, on deliberation, the jury had found that the act had been committed by the prisoner when he was in an unconscious state—we have always thought the verdict would have been sustained by the evidence ; and we have the highest authority for stating that the learned Bench who tried the prisoner were satisfied with both verdicts.

In fact, an eminent judge, now deceased, who presided at one of these trials, stated, that in his opinion, it would not be safe to convict on such testimony as that of the government in the arson case.

But to return to the defense of *somnambulism*, and the flippant and unjust criticism which has reflected upon Mr. Choate's connection with it.

It is not a little remarkable how plain this whole matter stands, when all the facts are developed. Mr. Choate, as we have heard from his own lips, never saw Tirrell, except in the court house. Amos B. Merrill, Esq., junior counsel of the prisoner, had known Tirrell at Weymouth, several years before, as one of the pupils at his school. While there he became acquainted with the peculiar affection to which Tirrell was subject, and from his own personal observation ; and knew that Tirrell was a sleep-walker or somnambulist. When Mr. Merrill was assigned as counsel to the prisoner, he remembered this peculiarity in the prisoner's habits, and by investigation satisfied himself of its actual existence as a *fact*.

The defense was prepared by Mr. Merrill with elaborate care, from interviews with the prisoner in his cell, and with his relatives and the medical gentlemen.

To Mr. Merrill, Tirrell declared his unconsciousness of committing any violence to the deceased. Mr. Choate was instructed by his associate in the details of the defense,

which was sustained by competent testimony, and corroborated by the highest medical authority. So that it would seem that Mr. Choate has not the credit or discredit of originating or "getting up" this defense.

The credible evidence was in the case and under the eye of a Court not prone to wink at sham defenses or ingenious sophistries. Mr. Choate, relying upon this evidence and the weakness of the government case, triumphantly brought his client within the limits of a fair and legitimate defense. So said the jury of Suffolk; and in this result the Court acquiesced.

This is one of those cases bristling with difficulties, which Mr. Choate loved to try; but, while he almost coveted the dangerous rally and the keen encounter, he always wanted something real to rely upon. Like the ancient philosopher, give him the place whereon to stand, and he would move the earth.

There were in the Tirrell case two great facts, clear to Mr. Choate's mind, which gave him a strong hold, and made him enthusiastic and irresistible.

The first was what we might call a great pathological fact—*the absence of motive*. Mr. Choate invariably protested—that a case of two young persons, lovers, devotedly attached to each other, retiring at night in the same apartment, and at early dawn—without a quarrel or other excitement—the one waking up and murdering the other, would be a stupendous moral miracle.

The other feature of this history was, that the prisoner was known to be a somnambulist. This, Mr. Choate felt to be a fixed fact. The first fact was, in his view, a sufficient answer to the government case: the second was subsidiary, and an aid in explaining the catastrophe.

It is not a little significant, that ten months after the

acquittal of Tirrell on the indictment for murder, and after the many strictures and censures which followed it, when the government had been fully apprised of the defense which their representative professed to consider frivolous and unfounded—the prisoner should, upon a charge of arson, on the same evidence, before other judges of the same Court, and by another jury, *be again acquitted*.

From this full, authentic, and satisfactory account of the facts and pleadings in this famous case it will be seen how shallow and baseless were all strictures upon the splendid advocate who alone could save the prisoner from an unjust death.

Ere I close this chapter upon Mr. Choate's professional life I wish to add the opinion given of him by a man, himself famous, a rival, a pure man, and of the most sober judgment.

Judge Curtis, late of the United States Supreme Court—the judge whose name will for ever be remembered, for delivering that dissenting opinion which spoke the thought of the North upon the Dred Scott case—Judge Curtis presented to the Massachusetts Supreme Court the resolutions of the Bar in honor of the memory of Rufus Choate. When presenting them he said, among other things, these words. They are spoken with judicial calmness, honesty, and honor. And they are spoken by one who knew thoroughly of what he was speaking—the subject and the man :

“I am aware that it has sometimes been thought, and by the thoughtless or inexperienced often said, that from his lips ‘With fatal sweetness elocution flowed.’

“But they who have thought or said this have but an imperfect notion of the nature of our judicial controversies, or of the ability for the discovery of truth and justice which may be expected here.

“Such persons begin with the false assumption that in the complicated cases which are brought to trial here, one party is altogether right and the other altogether wrong. They are ignorant that in nearly all cases there is truth, and justice, and law on both sides; that it is for the tribunal to discover how much of these belongs to each, and to balance them, and ascertain which preponderates; and that so artificial are the greater portion of our social rights, and so complex the facts on which they depend, that it is only by means of such an investigation and decision that it can be certainly known on which side the real justice is. That, consequently, it is the duty of the advocate to manifest and enforce all the elements of justice, truth, and law which exist on one side, and to take care that no false appearances of those great realities are exhibited on the other. That while the zealous discharge of this duty is consistent with the most devoted loyalty to truth and justice, it calls for the exertion of the highest attainments and powers of the lawyer and the advocate, in favor of the particular party whose interests have been intrusted to his care. And if, from eloquence, and learning, and skill, and laborious preparation, and ceaseless vigilance, so preëminent as in Mr. Choate, there might seem to be danger that the scales might incline to the wrong side, some compensation would be made by the increased exertion to which that seeming danger would naturally incite his opponents; and I am happy to believe what he believed, that as complete security against wrong as the nature of human institutions will permit, has always been found in the steadiness, intelligence, love of justice, and legal learning of the tribunal by which law and fact are here finally determined.

“I desire, therefore, on this occasion, and in this pres-

ence, and in behalf of my brethren of this Bar, to declare our appreciation of the injustice which would be done to this great and eloquent advocate by attributing to him any want of loyalty to truth, or any indifference to wrong, because he employed all his great powers and attainments, and used to the utmost his consummate skill and eloquence in exhibiting and enforcing the comparative merits of one side of the cases in which he acted. In doing so he but did his duty. If other people did theirs, the administration of justice was secured."

CHAPTER V.

CONVERSATIONS WITH RUFUS CHOATE.

THE Conversations detailed in this chapter, as was said in the Preface, were written down at the time, or within an hour or two of the time of their utterance. I always valued Mr. Choate's conversational advice and instruction so highly, that in very many instances I wrote it down as soon after leaving him as I could reach pen and paper.

These thoughts, it must be remembered, he threw off extemporaneously, without any purpose but the immediate one of pleasing talk. It seems to me they reveal the native fiber of his brain, and the mass of intellectual matter which habitually lay there, even more fully than his speeches and arguments.

They are arranged in the order of time, as the events of his life may perhaps be supposed to color or affect his thoughts.

1848.

NOTES OF CONVERSATION.

Mr. Choate said, in talking with me, one of the most essential things to an advocate is the study of style and language.

Style and Language.—First and foremost, and all-important in this study, is *Translation*. Translate every day, pen in hand—most accurately sifting words and comparing synonyms.

Cicero can be rendered so easily, Thucydides and Tacitus are preferable.

The object is to *enrich* one's vocabulary, acquire a flow of *uncommon* and not universally and readily occurring words. It is easy to acquire a facile flow of common language.

Burke (superior to Cicero), Bolingbroke, Sam Johnson. The English prose writers, as well as orators, to be perused—Shakspeare, Milton.

Law.—I advise you to labor to become a great lawyer, foundation of statesmanship. Study six hours per diem. Grand resource of life. It strengthens mind. You should attend Moot courts.

History.—English, Sharon Turner preëminent. Amenities—Hume down to Stuarts, good, though superficial. History of Common Law—later, better. Gibbon to be read just as soon as get ready for it. It must be the foundation of modern history.

Classics.—Originals, to be read—Greek and Latin—chronologically. Homer first, of Greek; and Plautus of Latin. Modern and popular histories by men who have devoted lives to comparing conflicting authorities. Thirlwall to be read with Mitford. The first Whig, last Tory. Thirlwall rather to be preferred. Grote's new work very fine; not quite so deep as Thirlwall.

Thus, in these works which we did read in our youth, we renew and preserve a perpetual childhood—*an eternal youth*.

October 3d, 1848.—Another conversation follows somewhat the same train of thought.

The Demosthenian is the style for oratoric success before the people—sharp and strong—might be less bald.

The Ciceronian for literary and juridical forms. Would not be popularly effective now.

Always prepare, investigate, compose a speech, *pen in hand*. This sitting down and just thinking, unless a man's blind, is exceptionable. Having written a speech, need not confine yourself to it.

Mr. Webster has always written when he could get a chance. He has read Burke much. Shakspeare studied. Milton not much—it is too poetical, with which he has little sympathy.

Webster must be considered very successful as a public orator. Everett doesn't warm us up extremely.

Webster a nice eater—not a gross one. Youth is the time to husband, and not try your constitution.

August 13, 1849.—This conversation illustrates how off-hand and ready all Mr. Choate's classic thoughts were.

He came sauntering into his office in good spirits this morning, and entered at once, as if his mind was brimming, into converse.

Twiss' *Livy* is the one for you. You mustn't read *Livy* with the idea of getting any facts. It's all a splendid romance. Horace and Juvenal are for the bar. Virgil contains nothing for quoting there, so terse, pithy, sententious. Dean Swift worthy to be read; he's a writer who repels, not one whom we love. Sam Johnson revolutionized English, introduced a harmony, balance, rhythm, unknown before.

August 22, 1849.—A few days after the foregoing, as he stood writing at a desk, he stopped and seemed to wish to relieve his dry legal annotating, by talk. Asking him some questions about Ireland, he replied; The Celt is poor stock.

The French are very courageous, are impetuous, mer-

curial, daring. Can't stand before the English. Beaten for a thousand years, Cressy, Agincourt. Fontenoy was an almost solitary exception, but it was gained in great measure, however, by the Irish.

English—it is not settled that they can be driven back by boarding-pike or bayonet by Americans. Thus the Chesapeake was carried. The Constitution had from one to two thirds British seamen in action with the *Guerriere*. Hull said he felt intense solicitude lest they should come aft, and ask to be excused from fighting.

The English is the only breed that *spontaneously*, not conventionally, resents the imputation of the lie.

September 5.—Choate—Change of study, although great relief, not enough, without physical relaxation. I have worked hard this last month *of recreation*, in general studies.

I study harder when not legally working than when I am, frequently.

A man, by forty, achieves his main feats of acquisition and training. I don't know when, though, I have *devoured*, been greedier for, had a sharper appetite for learning and thought, than this last month, or had a keener sense of the shortness of life.

Our general studies give one such delightful trains of thought, take us out of our common round of ideas. After a fortnight's trial of a vexing cause, beaten and dispirited, I have next morning taken up my classic or other books, and *in an hour* dispelled the cloud.

Napoleon was the greatest man since Cæsar. I agree with Professor Wilson, the greatest for a thousand years. Charlemagne must be treated as measurably a myth. The pictures of Napoleon are too smooth and handsome, not rugged, hard enough.

Wellington was really *surprised* at Waterloo.

Not generally known that the English line during the day of Waterloo retired several hundred yards. If Grouchy had kept Blucher off, Napoleon would have beaten.

I'm reading Niebuhr for amusement. Dryest and hardest stuff. Explodes all others but his own construction. He is questionable, till second Punic war, from imperfection of data.

September 15th, 1849.—Choate: Pinkney was one of the very greatest of lawyers. Legare no practical tact; great civilian. General Jones man of superior genius.

Cæsar had character as well as intellect. (He in this implied that Cicero had not.) A man of more learning than Bonaparte; who was as great a man, however.

Bonaparte would call learned men around him, and see through a thing at a glance.

His solacing himself with books, and never complaining, *except for effect*, at St. Helena, implied great power and magnanimity of mind. He was about as happy as he would have been here, had he got to America. He would never have been quiet here, for the France which recalled his ashes would have recalled his body.

Campaign of 1814 was his *magnum opus*. There's nothing like it in modern war.

When he said he was certain of dying, in two years, at St. Helena, and calmly faced it, there was yet a saving doubt in his own mind.

Russia possesses no aggressive power. No danger to Europe from her.

September 17th, 1849.—Choate remarked, in conversation to-day, "I've read repeatedly in my youth till two o'clock at night."

1850.

Sunday, February 24th.—Erskine, Mr. Choate said to-day, was, in some degree, an example adverse to the necessity of classic culture, for his only classics were English: Milton's poetry, and Burke. Macaulay is not a historical style—an essayist; his glitter wearisome in a history. Hume and Robertson both superior for style.

A student must eat little. He himself is subject, every two weeks, to sick headache. Gets an hour a day, for vigorous exercise, at six in the morning.

A great mind can't relax in mere pleasure-hunting, long. One should read in summer, but books of a lighter character. Still always pursue system.

I asked him, Why don't you go to Newport and have some fun?

"If I went to Newport with the intention of abandoning myself to pleasure, I should be compelled to hang myself by five o'clock in the evening." Still he said he would go out of town every summer; a railroad would allow one's mornings in town.

There has been no day of Webster's life, for thirty years, that his mind hasn't been laboriously and seriously exercised. Eight or nine hours a day enough for all work, legal and literary.

Napoleon, if he had not been employed in public affairs, would have become a great mathematician, a La Place.

Cæsar, the most remarkable man of the world; with all his revels, must have immensely labored.

Society is mere trifling. One should go into it to relax and to keep up relations to it, and to polish man-

ners. If genius and culture enter society, they throw off their character and bend to its rules.

Six hours a day is as much of a man's mind as law ought to have. After a vexatious case, half an hour's reading of a favorite author relieves, and cheers, and restores my mind. A man's great work, for four years after college, is to perfect his mind.

The present political crisis is, says Mr. Choate, the most appalling of any since the Union. There is a great lack of a feeling of nationality—all that keeps together; but the great advantage of the federal league is that it preserves peace.

But there must be a limit to our magnitude. When the foreign relations of the different parts become decidedly antagonistic, *that* is the barrier and the limit.

The Union can't endure for ever. If this crisis is survived, it may go on for *one hundred years*.

Massachusetts politics are narrow. In a moral point of view, she has *no right* to touch the subject of slavery. These zealots forget that there may be conflicting duties, and that it is duty to support the compromise of slavery, to secure universal peace and prosperity. Massachusetts continually breaks the *foedus*. Southern States homogeneous in productions and characters peculiarly adapted to form a separate State. Southern leaders are now busy, (he said ironically,) on that really delightful task, the creation of a new Commonwealth. Winthrop thinks, on the whole, this crisis will be surmounted.

May 12, 1850.—Had a long interview with Choate this afternoon in his library.

New England, he says, is somewhat anti-progressive; against acquisition of territory; free trade. She should

catch that great gale of impulse, enthusiasm and enterprise, which is ever agitating and giving tone to *America*.

Mr. Webster and Mr. Clay have their distinct departments—Mr. Webster, the philosopher ; Clay, the man of action. The former should write the state and diplomatic papers and legal opinions of an administration ; the latter should carry it on. As a leader of a party, knowing on just what ground to lead them, what issues, and how to present them, Clay is unrivaled in this country.

In the Jackson day, Clay thought the bank issue should be taken out of view, and was clearly right in opposition to Webster ; for the latter didn't discover, as usual, till too late, that sentiment had changed.

Mr. Webster has been at least twelve years behind his glory and his country. He didn't find out till well advanced that he stood a chance for the Presidency. Meanwhile, he had hit right and left, and made many enemies. He had, moreover, got a set of cold New England manners, and had thoroughly conformed himself for home consumption. But Clay has had the presidency in view from the first.

Clay patiently spins again the broken web of his schemes. I'm glad he's there in the Senate. Can compromise, if any one can.

The defense in the Tirrell case, of somnambulism, was suggested to me by the friends of the accused on my first retainer.

The defense of Professor Webster I wouldn't have any thing to do with, because they wouldn't admit it to be manslaughter. On that I would have taken my stand.

Sir Henry Bulwer is the second diplomat in England, Sir Stratford Canning the first. He is at Constantinople, the point of contact with the other great power of Europe, Russia.

September 24th.—Saw Mr. Choate for the first time since his return from Europe.

He enjoyed himself rarely, spending most of his time in viewing the localities of the Continent in preference to the dinners of London. He thinks he should never have time to visit any part of Europe again but Italy and Rome, which he did not see. Our conversation was general.

He showed me a new and immense edition of Everett. The portrait therein he thought fine, "full of his earlier hope." Everett, he said, announces a work on International Law. The field is too much occupied. Mackintosh's *Reclamation* and Wheaton cover all. The great question of neutrals and belligerents on the seas is the main modern question; and that is yet open, to be settled by war, etc.

Webster has as living and enduring a reputation as that kind of fame ever reaches. Brougham has more talent, and is less self-indulgent, but will not live so long in memory.

A book, however, is the only immortality.

Thinks Webster is no coward. His last effort on the compromise, by which "he saved the South," does not look so.

In the outset of his career, his Federalism differed from his allies. He was opposed to Hartford Convention. His life has been fettered.

Clay's reputation he thinks is ephemeral. He has allied himself with no living and continuing course of policy. Tariff which is his, is questionable in policy. His speeches, however, show sagacity and wisdom, and read full as well as the younger Pitt's.

Erskine will live in the speeches *reported by himself*. Cicero in his eternal writings. Though later writers of

the last thirty years are disposed not to side with Middleton, but to hold Cicero to have been a coward and trimmer.

He says he saw Macaulay and Brougham very satisfactorily. The former is a most impressive man ; his talk is epigrammatic and dominant. His MSS. is very blotted, every third word corrected—his conversation is a transcript of his style.

He talked with me (Choate) about the England of Addison compared with the England of the present.

The portrait of him in the American edition of his History is good.

Speaking of an English statesman, Choate said : His habits are so bad it's an even chance he'll be drunk at a party. He's no excuse for debauchery, in his age, for he has all learning to fall back on ; all fine and sweet and great veins of thought. These Erskine had not ; and when he left his practice, his senility and vacuity combined against him.

Erskine spoke the best English ever spoken by an advocate. It was learned from Burke and Milton. It's the finest, richest, and most remarkable English extant. *I (Choate) have read a page aloud (clarâ voce, not vivâ voce) since my return, daily.*

Burke will live for ever.

Brougham's style is very classic. A classic idiom is beautiful incorporated in English. His Reform speech peroration is fully Ciceronian. "To me much meditating." Webster's idiom is not at all classic. His classics were laid on late in life. He knows that the ancients spoke grandly and simply ; but what he speaks is his own natural style.

I have bought \$500 worth of books abroad.

I (Choate) like law, because, being of positive nature,

it is—unlike morals and politics—*sure ground*. You feel a degree of certainty in reading the exposition of a topic.

Still, it is learning we can't carry to another state of existence. A mind not naturally fond of it may cultivate a liking. After sixty, one don't like to study any thing. A mind confined exclusively to law is narrow, and not of a high order. Other and various learning indispensable, as we gather clearness from seeing things in various relations. Coke and Bacon were universally learned.

Six hours a day, four of study and two of lucubration and legal talk, are amply enough. The mind burdened, loses its memory and alacrity, and originality. The legal mind and subject is not the highest. But Law is the true training of the statesman, both for its learning and the habits of mind it begets. Both may be kept up; as in Webster, politics and law; though the world usually revenges itself for a double repute, by attributing superficiality in one branch to the owner.

For the jury, it is *a blunder* to profess to "just come into the case," etc.; you want to impress them with the idea that you have studied it deeply.

Webster concentrates his thought in writing, in his brief, in a few compact and telling propositions, by enunciating which from the paper, at the close, he presents his thought with great power.

Generally the object at the Bar must be to present common things in an uncommon and striking way. His biographer was not quite lawyer enough to write "Wirt's Life," though it's a very good and well-written affair.

You ought to read Tacitus over and over to catch his idiom—a certain exact fidelity to the original is essential, to improve by it. In the Annals, particular lives are more

valuable ; Tiberias is exquisitely drawn—so much better than Suetonius.

These terse writers have the style which the Bar should affect ; the Ciceronian is too diffuse and loose.

Sallust ought to be studied and written, particularly his Introductions. He was as much of a *rouè* and *blasè* as Solomon ; and speaks as he would.

Quintilian is *admirable*. He gives more of the *art* of rhetoric ; and you catch from him more of the trick of the trade.

Speeches of Thucydides worthy of close study ; but the course of the narrative is so even and uniform as to be hardly so improving as others.

Professor Webster's confession, he (Choate) says, *admits murder* in law. I, said Choate, never would have let him so word it.

Sir Robert Peel, says a writer in *Blackwood*, probably Alison, had an adaptive, not a creative mind. Indeed, a governing statesman in a popular government of a majority must be such ; for the policy of an age, the opinion of the majority, is the result of the thought of fifty years previous. It takes that time, for the reasonings of great and original thinkers to become popularized. It takes that time, for the stream to flow down from the mountain sources over the level and wide plain. An original statesman far in advance of his age, therefore, can not govern his own generation, *but will govern the succeeding one*.

Peel had not, either, that heroic order of mind which wins the support most delightful to the magnanimous spirit, that of free, unrewarded admiration. His eloquence lacked the *divina mens*, the burning enthusiasm, the breathing thoughts which sweep like tempests over minds.

December 22d.—A long conversation with Mr. Choate on Eloquence and Law to-day.

Pope, in English, Horace, in Latin, have *the mastery* of the finesses—the exquisite niceties, the *curiosa felicitas* of speech.

I am very much in favor of *translating* from the classics, as an oratoric preparation ; habitual.

Writing parts of speeches is very *important*. This every orator, from Cicero down, commends. It prevents one's speech growing common, and colloquial, and flatting out.

Mistake to think Burke was not in his prime a great orator. Gibbon says he listened to him with *infinite delight*. In his later productions, as he was more imaginative, so he was more balanced and rhythmical in his periods and sentences. Undoubtedly this balance and harmony of period, a musical and rounding act, is necessary to hold the attention of the audience very long.

The balanced period of Macaulay, Johnson and Gibbon differs from Burke's balance of sentence as the speaker differs from the writer. Each phrase of theirs is independent, except by the connection of thought. You're compelled, in reading it aloud, to close up at the end of every sentence.

Reading Burke aloud is a capital exercise.

Harrison Gray Otis had this balance and harmony of period to a very high extent. He had also a peculiar expression of voice sometimes which I can't describe ; but it was obvious even at his dinners.

Tristram Burgess had it, and perhaps it was the peculiarity of a school. It was the expression of high breeding.

Erskine was a very vehement speaker. A gentleman who heard him told me (Choate) that he has frequently

seen him, in addressing a jury, *jump up and knock his feet together* before he touched the floor again ; and, indeed, how could he have carried off many things which occur in his speeches except by great vehemence, such as “ I tremble at the thought ! ” The *Indian* in Stockdale’s case ! and “ I will bring him before the court ! ” and again, “ By God, the man who says this is a ruffian.”

Erskine was, however, very judicious in his forensic flights ; *never made a blunder*.

The management of his case, too, was admirable. Master of every art, and trick, and subtlety and contrivance, But, after all, he was a very singular, and, in some degree, an inexplicable fellow.

Of a great English statesman Choate said, He is not, in my judgment, worthy the name of orator. He has *no heart*, and can not, therefore, be an orator. He is an unprincipled man. He is pedantic. One of his passages, I remember, is stolen bodily from Cicero. He frequently steals whole pages, which, by his tremendous vehemence, he so incorporates into his spoken delivery that it is not suspected.

Webster, in his prime, was a prodigious orator, I think. He has to some degree a balance of period. He can give an effect, though, to single passages, greater than any man I ever saw. Webster, in his prime, was far more spirited than now. You can perceive his falling off even in conversation.

Clay was a great orator. His language was such as an absorbing mind would naturally pick up in thirty years’ intimacy with thorough-bred men. It is quite equal to William Pitt’s.

I have seen him in the middle of a speech in the Sen-

ate completely *flabbergasted* for want of a pinch of snuff. That is the *only stimulus* I ever knew him use.

Demosthenes had, in addition to iron logic and massive reason, an awful vehemence, perfectly tempestuous and boisterous; a diction, every word of which was clean cut and sterling, like stamped gold; a harmony of numbers also. Legare's article in the New York Review on him, is the best thing ever written in English about him. He was very common sense and straightforward.

Calhoun was a great reasoner and logician; arid as a desert, no pretensions to genuine eloquence. He stood up straight, and spoke clearly some thirty minutes, generally. He spoke as *Euclid* would have spoken. He was full of fine-spun distinction; lacked, in later days, common sense.

He lived two lives; for, being Monroe's Secretary of War, he expected to succeed J. Q. Adams as President. At that time he was *altogether the first young man in the nation*. But when Jackson came up, he saw—for he had perfect sagacity, and could see a great way into the future—that his day was over, his chance was gone. From that time he became *one-sided*, mischievous, and making good evil, always. He had no generous joys; was of a *saturnine* cast. He was not, perhaps, *willfully* wicked; but he was disappointed to death.

Law.—Unless one takes hold of the law with determination to be a *great lawyer*, it's a poor concern, and uninteresting; but a love of it *may be begotten*. After mastering its rudiments, it is, with all its rewards, as interesting and attractive as any other department of serious, laborious thought.

For five or six years at the beginning I gave myself *wholly* to it, which is essential to making progress in it.

The mind capable of excelling in moral philosophy or in pure mathematics, ought to succeed in law.

I recommend Common-placing in law, not writing a digest or cream of what you read ; but mention, under proper heads, in legal common-place book, a good authority, etc., a good point, a good analysis, a good conclusion.

An *admirable* practice is to take a case in the books, read the arguments and judgment, and make out a regular brief, having consulted all the authorities, etc., just exactly as if you were about to argue it before the Bench. This is eminently useful, as fixing the points and cases *eternal* in mind, and is an admirable discipline in legal speech, legal forensics, legal address. Its only difficulty is, the time it consumes. I (Choate) did it in summer, in the long vacation. I have kept it up till lately.

I (Choate) never read a new book, as, for instance, a Patent Book, even *now*, without breaking it more or less into *two or three* legal common-place books.

To read a book straight through is stupid indeed. But you may make it the guide to an examination and study of the subject it treats of—as, for example, “Long on Sales.” Consult cases therein referred to, and Chitty on Contracts, etc.

Lord Brougham’s “Statesmen” is a very shallow work.

Another conversation, about the same time, bears no date. It is as follows :

Mr. Choate says, Judge Woodbury is in many respects remarkable. Used to study sixteen hours a day, always very laborious—traveled with book—studies too much—overtasks and clouds his mind. He has, from his original elevation to the Bench at twenty-seven years of age, disciplined and improved his mind by *written compositions*. They are well considered as opinions, contentious as arguments.

A man may read without much growth of mind, or accession of power. Woodbury is the next democratic candidate for the presidency, probably.

Used to sleep on a board, in order not to prolong his repose. Had a mirror full length to practice speaking before.

He was of a liberally disposed mind. Smithsonian, etc., he always favored; but singularly deficient in taste and accomplishments in the *belles lettres*, and polite letters, and literature generally.

Judge Story, by hard study, *produced* himself far beyond his early promise. He and J. Q. Adams both grew stronger as they grew older. He rose from each "opinion," bigger than before.

1851.

March.—Mr. Choate said recently that even *now*, he practices (in summer leisure) the writing out a law point, so as to present it in the most effective manner to The Court, simply as a discipline.

He remarked, When I was with Wirt, I heard Pinkney speak three days. The first two days he tore himself all to pieces; but the third day, with his vast command of words rolling out, it was inexpressible music. He had a tough head.

1852.

January 4th.—Talking with Mr. Choate to-day about the dryness and sluggishness of mind which the exclusive study of law produces, he said, That is most natural. The study of law, like the study of any severe abstract

science, takes a man out of connection with the common thoughts of men, and out of sympathy with the common heart. Intrinsically, too, it is deadening to the feelings, and dwarfing to the imagination.

A youth just graduated has a vast advantage over a new-fledged lawyer. His classics are all fresh, his sentiments warm and high, and he is unfettered by a complexity of rules, either from science or from decorum.

The English bar have made just this mistake. Graduating from college, full of fervor and inspiring thought, they soon observe that a man is nothing unless he concentrates his total energy on some point. Accordingly, they bend to the law. It demands, at first, an exclusive devotion. Two or three years are thus passed. The foundations of a legal mind are thus laid, but all eloquent stirrings and impulses of mind are *scotched*. If *now* the student would revert to and revive his classics and imagination, his impulsive sentiments and his high ardors; and if he would carry on this process *pari passu* with his dry and killing law, he would become, as might many an English barrister who is a mere barrister, a great advocate. But the English bar, when, at the close of their severe groundwork preparatory study, they found themselves husky and barren, plunged deeper into the desert of bare law, and were never heard of more save in the courts. Many of them graduated with all the foundations laid for an accomplished, eloquent man—they became *mere lawyers*.

The culture of *expression* should be a *specific study*, quite distinct from the invention of thought. Language and its elements, words, are to be mastered by direct, earnest labor. A speaker ought *daily* to exercise and *air* his vocabulary, and also to add to and enrich it. *Transla-*

tion should be pursued with these *two objects*, to bring up to the mind and employ all the words you already *own*, and to tax and *torment* invention and discovery and the very deepest memory, for additional, rich, and admirably expressive words. In translating, the student should not put down a word till he has thought of at least *six synonyms* or varieties of expression, for the idea. I would have him fastidious and eager enough to go; not unfrequently, half round his library pulling down books, to *hunt up a word—the word*.

Dictionaries are of great service in this filling up and fertilizing of diction. Pinkney had all the dictionaries which he could buy, from Richardson to Webster. You don't want a diction gathered from the newspapers, caught from the air, common and unsuggestive; but you want one whose every word is full freighted with *suggestion and association*, with beauty and power. If you want to see the power derived from *words*, read one of Pinkney's early speeches made before he visited England, and one of his last when he reigned monarch of the Bar. I heard his last great argument, when, by his over work, he snapped the cord of his life. His diction was splendidly rich, copious, and flowing. *Webster* followed him, but I could not help thinking he was infinitely dry, barren, and jejune.

Webster uses common words, but yet of them he strives for those which are pictorial and full-freighted.

Judge Story's English was very common place and wishy-washy. His was a mere *fluency*, a rattle-clap common English. He never had time, amid his splendid legal accomplishments, to enlarge his vocabulary.

In addition to translating, *talking* is an excellent discipline. It exercises all those words which one has at ready command. You want to *use* your stock continually,

or it will rust. Buchanan, the foreign missionary, once observed that he doubted not, he had laid up in his memory one hundred thousand words, which were never employed ; but which, by a little use, he would fully command. The English of Shakspeare—that is, the diction—Choate said he esteemed very common.

Style, or an “elegant method of arranging the thought, is powerful to persuade as well as to please,” as says Sir William Jones. Upon the vast importance of this, Choate entirely coincides with him. He says, for instance, the narrative of a simple assault case will instantly reveal the true *artist*. *Cicero* is undoubtedly the best orator to study for oratoric arrangement of the leading thoughts, and the minor thoughts ; and for the divisions, sentences, and members of sentences. *Tacitus* is obviously composed for the eye, not the ear.

The laws of arrangement of thought, *big* and *little*, are prescribed by the constitution of the human mind, and multiply the power of the thoughts, with the most illiterate. The general structure and the detailed making up should tend to the climax ; the thought, of divisions of discourse, and of the sentences, continually rising and swelling to the close. The literal climax itself is a very energetic arrangement of an idea. The antithesis—the powerful contrast of different thoughts and of different features of the same thought—is valuable for vivacity. Very effective, also, is the *epithet*—a truly great arm of assault.

William Pitt was indebted for his charm of oratory mainly to his voice and his periods. These were equally and sometimes beautifully balanced, and most harmoniously constructed. The musical tide rode on with a *fine flow*.

Macaulay's speeches, with their exquisite art of com-

position, were, in the House of Commons, very effective and captivating.

A Lawyer should maintain a daily converse with Cicero and the ancients ; but as their turn of mind was in many respects so different from ours, it is important to qualify and correct their influences by an equally constant and unflagging *study of great modern orators*, their thoughts, and their expressions. I would at all times, therefore, have by me some *one modern orator*, in whom at least a page should be read daily.

But with this cultivation of words and sentences—this Ciceronian analysis of the whole art of composition, one must remember that he needs to be for ever *loading and storing the mind with thoughts*. The whole range of polite literature should be vexed for them. They are the materials, the topics, out of which illustration and argument spring. Read *Bacon* ; Burke is all out of Bacon. Read Grattan and Sheridan ; they are good *suggestives*. Also, diligently turn (*versate manu*) Lord Erskine. Fox is to be read. He had ten times the genius of Pitt, in whom very little genuine eloquence shines. Burke, of course. Although he was not always appreciated by the House of Commons, which was then a *mere mob*, he would to-day, in our Senate, be listened to with tears. He was often too long, though, it must be admitted.

Chatham's studies were very wide. His English is vastly before his son's.

A man should pre-write his speeches, for several reasons ; one, that you may be *sure* you get to the bottom of your subject, and thoroughly understand it, through and through, a mastery which you can't be sure of in any other way. Another reason is, that you may have, in speaking, the confidence and ease flowing from the certainty that

you can't *break down* ; and, once more, that you may fully know the whole field you are about traveling over in speech, and the precise relation to the whole of each part. Besides, extempore discourse must always be unequal and uncertain.

The question as to the advantage of pre-writing must now be considered as *settled*. Whitefield, field-preacher as he was, nevertheless preached his sermon the *tenth* time far better than the first.

This written matter must be *well-memorized* in mind, even though as in the case of a lecture, the papers lie before you. For no matter, can be well delivered that does not lie more fully in the mind than the eye, in an instant, is able to lodge it there.

And now, to complete and finish this oratoric discipline, there must be practice in *Elocution*. Chesterfield, in his letters to his son, said, "Manner is of as *much importance as matter*." He said he at one time determined to make himself the best speaker in Parliament, and he made himself so. The emphases and the cadences are to be severely attended to ; and also the fall of the voice on the close of *the members* of sentences.

After a speech is all prepared, then, just before speaking, it ought to be *warmed up in the mind*.

Earnestness is always essential ; by which I mean, being *wide-awake* and spirited.

The maxim "*orator fit*" is undoubtedly true. With fair natural gifts, there's many a man who could make himself an orator.

Mr. Webster's best oratorical effort was the Adams and Jefferson eulogy. That produced an extraordinary effect.

There is an anecdote of Hamilton, illustrating what I have said of the value of writing as a preparative, in re-

spect to full and deep thought ; Hamilton made the greatest argument ever uttered in this country. It was on the law of libel, and by it he stamped upon the mind of this country, the principle that in an action for libel, *the truth*, if uttered without malice, was a justification. Upon the night previous to the argument, he *wrote out* every word of it ; *then he tore it up*. He was, by writing, fully prepared ; it lay very fully in his mind ; and, not to be cramped and fettered by a precise verbal exactness, he tore it to pieces. *Then* he spoke and conquered.

One thing unlocks the secret of Pinkney's intellectual affluence. He made it a rule, from his youth, never to see a fine idea without committing it to memory.

When in England, he had a splendid schooling. Burke's tradition was still fresh. Pitt and Fox were in their glory. Siddons and Kemble trod the boards, and Erskine filled the forum. However he pretended to depreciate Erskine, he always took care to hear him.

Bolingbroke is rich and glorious. Showing me a very fine engraving of him, he observed that he had a *Cæsarean* head.

He remarked that Kossuth was truly a most eloquent man. His prayer, and his speech in England, when he paused—"I thought I saw again the millions of my native land, and heard them shout—Liberty or Death ;" these he considers the most eloquent passages which he has seen of his speeches.

The Bar dinner to him in New York was not attended by very many of the lawyers. They sold their tickets, and consequently the audience which hissed Judge Duer was hardly one half composed of professional men.

Kossuth has warm sensibilities, an ardent imagination, and, more than all, an object of impassioned interest to

him and to us. His eloquence, were it not for the irresistible attraction of the theme, would be far less moving and popular than the extraordinary degree in which we see it now.

Henry Clay had the best education in the world for an orator—an active political life. His mind at two or three periods in his life has been *distended by the great thoughts of the crisis*. The war of 1812 he understood, and Calhoun understood. He saw what it was going to do for us, by its moral effect upon us and upon other people—to make us a first-class power on earth. His industrial policy was another stretcher for his mind.

They tell in Washington an anecdote of Judge Story and Clay which is spicy. The judge was rattling on one evening, and among other things observed, that he wished he'd been in Webster's place at that time (the time when Webster made his first speech on the commercial policy, and opposed to Clay). Clay looked up at this remark, and quietly but cuttingly observed, "*I wish you had.*"

Brougham has hate and anger, the passions which make the vehement and bitter speech.

In *lecturing*, remember that the lecture has its own rule. It presumes that you undertake to *edify*. Accordingly I (Choate) think it's an affront to an audience for a man to stand before them *with no notes*, and undertake to rattle off, *apparently extempore*, what it is assumed will *instruct* them. Occasionally, also, it's a relief to an audience for the speaker to turn to his notes, or to read an extract from a book. The more passionate parts, of course should be fully committed; and the whole discourse should be fresh in the mind. Neither in a lecture nor in a speech do you want to keep bursting out all the time in high passages. The *thing's impossible*. Much of the dead

level always must be merely instructive, and informing, and strong, and suggesting, and will not delight all.

One man with a few grains of ideas will, by the mastery of expression, do more than another with a bushel.

Chatham's English was by many degrees finer than his son's. His studies had been wide.

And so ends this conversation, which was one of the most interesting and practical I ever enjoyed with Rufus Choate.

P. S. to the above.—Choate, in his conversation, said that Burke was the best orator to practice elocution upon, he being "half way between Bacon and Pitt."

February 14.—When I (Choate) was in college, I read McCormick, a book unfriendly to Burke, and which collects the various aspersions upon him. The margin is completely covered with notes in my hand, such as "d——d rascal," etc., I was so indignant at attacks on Burke. The story of Burke's stimulating with hot water is there retailed.

He said he thought H. G. Otis a far higher order of man than the shallow rhetorician. He was a good lawyer, but at twenty-eight diverged from it to politics. He hadn't, however, stocked his mind with the *maxims*, the *ideas*, the *knowledges*, which form the very best material of a great orator.

April 19, 1852.—Mr. Choate said, in a talk to-day; Sickness, and lassitude, and depression, are the common obstacles and trials of the march and temper of ambition. *That only which endures unto the end, is the true gold.* I told him of a young college friend of mine discouraged by sickness and retiring from business and aspiration. "He wasn't willing to *pay the price* for fame, then," said Choate.

Cicero he considers to have had less *fire* and unction than Demosthenes. He was, however, very *vehement*—at one time, by his impetuosity and violence of action, severely shattering his constitution. But his mind was infinitely *richer* than the Grecian's. A philosopher, a man of profound learning, as well as a statesman and orator. Upon his brain there rested a far greater mass of ideas than on the mind of the first orator of the world. He could move men, too ; as, for example, when Cæsar was touched and overcome in the speech for Marcellus.

Undoubtedly Julius Cæsar had more fire ; but Cicero, on the whole, must be held the *second best orator* who ever spoke in all this world.

Webster, I think, he continued, is either very ordinary in discourse, or very great. I have heard him, *for a few minutes*, when there could be no greater human eloquence. But not being a man of much general learning or literature, where there is no great thought to be elaborated, or lofty sentiment to be pronounced, he halts and drags. This is the case even in his very best orations. Out of law and statesmanship he is not rich, and we have in him no sparkle or gleam of allusion and reference to quicken our fancies ; but he flies high, or else he creeps sluggishly along.

Pinkney's great original endowment was his legal mind. He had as fine a legal head as was ever grown in America—perhaps some would say the fullest and of the broadest dimensions. His rhetoric was all put on. It was got up late in life, and was a magnificent and labored costume, solely created to display his law. He is always more or less stilted and far-fetched ; but he made his bursts *tell* ; they were *successful* then, whatever we may think in now reading them ; and *success* is the true test of oratoric com-

position. There were, however, in his works, *two distinct strata*; one, his diction—his varied, comprehensive, admirable and discriminating *words*; and his figures and chaotic confusion of metaphor. The former—his words—he learned by a most persistent study of *literature* and the best speakers of England, and I hold his diction to be in the *first rank* for the purposes of the orator. (He conned over dictionaries, too, most arduously.) But the latter—his figures—his Minerva brandishing the spear, his Juno, etc., etc., I never thought much of.

Upon the case of the Nereid, though, I think the Supreme Court were clearly wrong, and he as clearly right.

There are at least *twenty different kinds of English*. There is a fine and delicate English for sentiment, and a very nice and full and discriminating exact English for philological description, like De Quincey's; and a copious and rich and somewhat loose English for the orator. He does not often need to mark by a word accurate shades of meaning; he may and does repeat much; he throws various lights upon the point; and the side he's on, too, often helps to show what he means. Fox, and Erskine, and everybody, repeat much, restate and vary their expression of propositions.

Erskine knew *men* very thoroughly, from his service on deck and field. Then he had thrown himself upon the best English literature, with a hungry and even *voracious* appetite; and from it, especially from his careful and continued study of Milton and Shakspeare, he gained his chaste, rich and admirable *diction*. This diction is his chief acquisition. And he thus grasped the flower of literature, without becoming imbued with the faults and foibles of the literary man; which are a dreamy, sentimental, brooding, imagining tendency. *These words he divided*

and delivered in sentences fashioned by a very musical and rhythmic ear. He had, too, a natural knack for catching at elegant and felicitous modes of expression.

As he learned not much besides *words*, and how to answer the more pressing necessities of his profession, and as he came early into active business, he spent his life in thus meeting the demands of the day ; and when his energies for that somewhat abated, he had *no thought* and knowledge so fall back upon.

Brougham, I (Choate) think, is more naturally inclined to *science* than politics or law. But he has vast energy and untiring activity of mind, and has bent all his powers to oratory. Although not a true orator, possessing little power of touching the feelings, yet, by the sheer force and fertility of his mind, he is the first speaker in England.

Of another orator he said, He is a mere highly-colored popinjay. He has a tawdry rhetoric, and can not move men with it ; that is men of much thought. He has had no active commerce with men, he has not battled and fellowshiped with them in a long active court and jury life. If his mind hadn't been *shallow*, he wouldn't have had his head turned by the early adulation of English society.

Active legal business affords little or no training or supply for speaking. It gives one a certain facility of action, but puts no thought or diction or *stuff* into you.

Mr. Choate also remarked that Lord Jeffrey, the great lawyer and reviewer, got his English from translating and from *reading*. He was however rather the literary than the public man. Like Macaulay, he had the true literary, solitary, and abstracted musing tastes. Moreover, I remember Choate remarked to me, If you want really to master what you think you know, *tell* it to somebody. I once knew a man who learned very many complete pages

of Addison, and retailed it out in conversation. He was thus practicing very much the same thing as extempore delivery in original words of other people's thoughts ; a practice I much approve of. One thereby exercises in the mere invention of *expression*, without being compelled to labor for the invention of thought ; for a daily drill practice of which, an active life hardly affords time.

Mr. Choate also observed that he thought De Quincey something of a babbler and gossip, a busy-body, an intermeddler with other people's affairs. He was, apparently, not loved by any of his associates except Wilson, Kit North. And I doubt sometimes, said he, if he was a true man, though I think him one intellectually, of latent accomplishment, giving off some of the most critical and finest English extant.

September 26, 1852.—Mr. Choate gave me an afternoon to-day with him in his noble library.

Among many things, we discussed the rejection of Webster by the Baltimore Convention. I maintained that a great statesman who had for years given himself to his party and his country, had a *claim* on that party for the presidency. This he denied. The moment you suggest a *claim* on the party for his services, you suggest a reflection on the statesman's patriotism. Webster, moreover, has had some rewards as he went along—Washington, with all its attractions, and the society of the first men of the land.

He remarked that he thought Scott's chances of an election were very good. Webster, he says, was so confident of receiving the nomination of the Baltimore Convention, that he said to Blatchford, one of his friends, "If I am nominated, of which now there seems little doubt, I shall make a tour of the West." I (Choate) think Webster would have been elected, if nominated. I think America

is proud to weakness of her men of great mental stature—and there would have been a mighty reaction and upheaving of the popular waters. All the young men of education, all the ministers would have rallied for him. His *Alleghanian* super-excellence, especially in a contest like this, where no great issues are involved, but it is mainly a contest of *men*, must have given him the prize. Yet even while he was so confident during the sessions of the nominating body, there wasn't the shadow of a chance for his nomination.

I suggested to Mr. Choate that the country had prided itself on Clay's services, and yet had never crowned him ; which he acknowledged was an argument against his theory.

Everett did not rule in Congress not because his speaking was not fine, but because all his peculiar knowledges and excellences were out of place. He had, for instance, studied the Greek drama most critically for five years ; but how did that help him ? He wasn't great on ready, off-hand speaking. If he had been brought up differently, taught school in vacations, and worked his way along through a lawyer's office, he might have been a different man. Still I don't think he can be called an unsuccessful man.

I (Choate) at one time ran too much to words and phrases ; for which alone, by the way, literature is directly valuable, except as a recreation. I consider Mr. — a mere *railer*. He fixes his mind wholly on one side, utterly disregards all other aspects, other qualifications or extenuations ; spends all his intellect in the poor exercise of making phrases, variously and pungently to express this extreme one-sidedness. Hence all his power.

D'Israeli speaks well in Parliament undoubtedly. But he is a literary man speaking well ; not a talker like

unto the style in which the great orators of England have spoken.

It's a great mistake to think anything too profound or rich for a popular audience. No train of thought is too deep or subtle, or grand—but the manner of presenting it to their untutored minds should be peculiar. It should be presented in anecdote or sparkling truism, or telling illustration, or stinging epithet, etc. ; always in some concrete form, never in a logical, abstract, syllogistic shape.

There was one year of my early life in which I (Choate) dried my mind all up by an exclusive study of the law. Mr. ——— ought to do a vast deal more than he does. He has no occupying profession, while all we lawyers get is a brief and furtive access to our miscellaneous libraries morning and evenings. I at present am reading a page of Bacon daily. His tide of thought is a soaring, swelling stream. All knowledge is indeed contributory to the orator, but some much more so than other kinds.

Clay was, I think, very different in his oratory from Patrick Henry. The latter was purely *emotional*. He never to my knowledge gave any wise advice in his life. Clay's power really rested on his wisdom, his genuine far-sighted wisdom. *And his oratory was much trained*. Very considerable emotional impulse, however, was combined with his intellect.

Burke in a speech would have employed very much the same essential groundwork as Clay, but it would have been sustained by a class of considerations drawn from a wider sweep of philosophy ; it would have been illustrated by finer images, and embodied in far richer diction.

Webster's phrases are much more *telling* than Everett's. They run through the land like *coin*.

I think there were at least a thousand men in the army

of Mexico, who in going there were laying out for the presidency. Caleb Cushing won't stay on the Bench six months. *It's obvious that his thoughts are off in Cuba and elsewhere.*

Two weeks after the foregoing converse with Mr. Choate I spent another Sunday afternoon with him. He showed me a great folio dictionary, newly brought out by some one, of *varied phrases* for the same idea.

I think that Scott will be elected, said he. I told him I disagreed with him, and argued to show it, from the fact that we had never carried the three great States, the gaining of two of which is indispensable to success, when the Democrats are united. Now no Barnburning heresy, I said in reply, sunders their wigwam. He changed the topic, and went on to say, The acceptance of our American Constitution was almost a miracle. Sam Adams and Patrick Henry, honest but most dangerous men, both violently opposed it. They couldn't see the use of it, the necessity for it. Finally it was adopted in the Massachusetts Convention by a sort of trick. Several clauses were added as amendments, which the adversaries of the Constitution thought were conditions precedent to its adoption, when really they were conditions subsequent, and were never broached afterwards. All the sea-board counties of the State voted for it, and the Connecticut valley. *To-day*, if the appeal were to be made by the wisdom and intelligence of Massachusetts to the mass of the people, I don't think the Constitution would be adopted. It was a great triumph of *pure reason*.

Moses carried the Israelites by a direct appeal to their senses. I don't doubt that half of them were frightened all but to death by the miracles and portents which sanctioned his divine commission. And these means were con-

tinued during all the journey. But in this case of our Constitution there was no appeal to the senses; and the interests of all the demagogues—of whom Hancock was one—were of course against it.

Any thing may be said to a jury, if you see the Court seem approving, and the jurymen listen. An aphorism, a citation, an “it was said by that great man,” or a historical allusion is always appropriate to a jury argument. The latter, however, must not be elaborate but rapid and sketchy. Erskine got along, not by wide scope and reach of rich allusion and thought, but by a beautiful voice, emotional temperament, and the *richest English* taken from Shakspeare and Milton.

Pinkney I think the only very interesting mind that has in this country turned itself devotedly to law.

Judge Story was not naturally a preëminent votary of the Muses.

Webster has never, since he was thirty, given himself to a scientific study of the law. He has been occupied in politics and general reading a good deal. His mind is far richer than Story's—more ideas; though Story is great.

Society, unless you talk with superior men, is not worth much. You must talk small, and you get no important knowledge or thinkings.

A legal mind fully content and satisfied with law can not be a mind of a very high order; for the law rests on arbitrary collections of decrees. If I could not get any time from my law, for liberal and grateful studies, I'd give up law from my present case. What wears upon me in practice is not study, but fatigue and responsibility of courts. My nervous attacks cease when I intermit courts.

It is not surprising that after several years of study a man should be sick a year. Moderation with labor is taught by it.

Goethe's motto is good: *haste not, rest not*. Read Pliny, Johnson, and those didactics which teach content. Our country is too headlong.

In studying the Reports, study back from the *last case* reported. Study back the sources of every dictum. Make a complete argument for yourself in the case.

Byron's thoughts are usable. Shakspeare is full of usable maxims for speaking. A real love of Shakspeare is rare. Read him critically with Schlegel. Study dictionary of different phrases for the same idea.

You get copiousness not merely by words, but by fullness of thoughts, knowledges. I recommend to you German—you being at an age when you may have thirty years of reading before you. It is a cognate tongue; *and in it move the whole new springs of modern thought*, archæology, ethnology, and all.

Desultory reading is a waste of life. Read by system.

Always consider that *the law* is to be your business. Never depend on politics.

Politics.—It's a curious whimsicality of the people, that if a man by fortune and character is finely fitted for public life they won't take him. A man is dependent in politics *on a perfect rabble*, half ethically trained. As soon as a man makes *politics a trade* he's dropped. But if they can catch a man at a time when it's devilishly inconvenient for him to go, they're sure to send him to Congress. This peculiarity must rest of course, like all general feelings, on some principle. I query whether it isn't the idea of selfishness. The people think and feel they'll be better served by one who has no wish to go.

Mr. —, when in the Senate, forgot the Senate, and thought only of the Atlas office. He is shelved I think.

As soon as a man has been three years in Congress the

people grow impatient of him. There seems to be something in the taste of northern society which forbids permanency in public life. The English are different. There the borough system in some measure is a corrective.

In the South a few rule, not the multitude. Hence Clay's long-continued success. The South has no literature.

A man should keep back from politics several years, if he would *really* recommend himself. Suppose Mr. — gets to Congress. It throws him out of all business, and he is not likely to be reëlected. Then, where is he?

Rantoul had better have devoted himself to his profession. Death would then have found him much higher up. And, as for his happiness, he had to be sure more congenial studies, but then he had eternal disappointments in his political ambition.

A man is disgusted with law when he is dosed, surfeited. Five hours a day, including practice, is enough for law. Save that one ought daily to get at least one hour for quiet book-study of law. For five years I studied law exclusively, and *dried* my mind, but, being constantly in practice, I learned to love it. Now, the whole of my pleasurable mental occupations are in very different fields; therefore I fear law may grow distasteful to me; and so I'm studying it daily scientifically. I'm going to read Coke on Littleton to quicken my legal taste; for it would be dreadful, you know, if the occupation a man was to pursue for the last ten years of his life should be repulsive.

Horace Binney waited ten years for a fee. Kent and Mansfield evinced the most liberal culture.

Practical business in law is the proper preparation for the Senate. A great part of the Senators are ex-judges. The country demands that men have a business of some kind.

The above conversation with Choate was in 1852. Scott was not elected.

October 30th, 1852.—Talking with Mr. Choate, to-day, he said, A man in speaking ought rather to check the onward tide of a rapid mind, lest he fall into a mere *unimpressive* volubility.

He said he had declined the Boston eulogy on Mr. Webster because he had previously accepted an invitation similar from Dartmouth College. To do that he could take his own time, and could indulge in a far more critical, scholastic, and to him grateful analysis of the theme, than would be fit for Faneuil Hall; and besides, it would tax me terribly, said he, to speak two hours in Faneuil Hall.

All the successive periods of Webster's life, the educational, when his mind formed, the professional, etc., he should examine. One hour he thought he should give to the examination of the "conscience" abusers of Webster, all of whom admit that if he honestly thought his country in jeopardy, his course on the 7th of March was justifiable.

Rattling on in this rapid way, he commenced, Poor Everett!—no he is not poor, he is *great* Everett—I'm glad he's gone into the State Department for his own sake, and Webster's sake.

December 20th, 1852.—A very long and delightful conversation with Mr. Choate in his library yesterday.

He spoke of the admirable character of Goodrich's Book of English Orators, but thought he didn't quite do justice to Grattan, in his description of the ridiculousness of his "first fifteen minutes."

Grattan had one of the grandest opportunities ever given to an orator, in his speech opening thus: "*At length I address a new country.*" Mr. Choate more than once spoke

to me of this speech. Such grand occasions, he said, are vouchsafed to few orators. Webster had not, in all his career, any such an one.

Mirabeau, too, spoke in a new *epoch*; and Rousseau, in his writings, caught his burning eloquence from this, that he was for the first time uttering the long-crushed thoughts and wants of the *poor million*!

A speaker makes his impression, if he ever makes it, in the *first hour*, sometimes in the first fifteen minutes; for if he has a proper and firm grasp of his case, he then puts forth the outline of his grounds of argument. He plays the *overture*, which hints at or announces all the airs of the coming opera. All the rest is mere filling up; answering objections, giving one juryman little arguments with which to answer the objections of his fellows, etc. Indeed this may be taken as a fixed rule, that the popular mind can never be vigorously addressed, deeply moved, and stirred, and fixed, more than *one hour* in any single address.

The jury address of four hours is no exception to this; for they don't, in its whole course, give more than *one hour's fixed attention*. Some parts of that hour's attention may be scattered over various portions of the argument, but generally most of it is given at first. Then curiosity for what you're going to rely on in argument is all aroused, and they are eager and attentive. After that they wander; and always, in my long address to juries, *some one goes to sleep*.

In truth, neither in public speeches nor private is it possible for *the common mind, or perhaps any mind, to be fixed and stirred more than an hour*.

It is to be said also of the apparent exception of juries to this rule, that with them there is a business to be done,

not mere pleasure ; and a great variety in topics, and in commenting on various witnesses, turning to the judge, etc.

When some one yawned in my face while I was speaking I have often wished *I was dead almost*. And a thousand times I have felt, he said, the drag, and flag, and doubt of success in the middle of my speeches. It results from the first pressure of fatigue upon the speaker, and some other nervous causes also.

The power of *sympathy* is very strong in every orator. Erskine was sometimes said to have been put down by his adversary procuring some one to yawn in his face. And Pinkney I myself saw, in his last great argument against Webster, in the full tide of eloquence, completely disturbed by a noise at the door. He stopped and said he couldn't go on till that confusion was stopped. I remember it, and shall, for a thousand years ; as also the smile which passed over Webster's grim, unnervous face.

I have learned not to mind the many trials of my sympathy ever occurring in speaking, for it won't do to take notice of them. This power of sympathy it is which enables a person to speak far better to an audience, and very differently, too, from what he would do alone, in private.

In addressing an audience, don't fall into the error which has much impaired moving power, of *looking about from side to side*, in the very *middle of your sentences*, so that, in fact, you address *nobody* in particular.

It's well enough and desirable to address *different quarters or sections* of the audience. But if you were conversing with a circle of friends, you wouldn't look around naturally, save at conclusions of sentences, or at least clauses of sentences.

Elocutionary training I most highly approve of. I would go to an elocutionist myself, if I could get time.

Everett is probably an example of all that can be done by mere elocutionary culture to delight and affect. If, however, he had devoted a part of his *efforts to developing the emotional part of his nature*, his complete power would doubtless have been greater.

I have always, even before I first went to Congress, practiced a daily sort of elocutionary culture, combined with a culture of the emotional nature. I have read aloud, or rather spoken, every day, a page from Burke, or some rich author, laboring for two things: to *feel* all the emotions of indignation, sarcasm, commiseration, etc., which were felt by him. And also, to make my voice *flexibly* express all the changes of pitch and time, etc., appropriate to the fluctuation of the thought. I have done this in my room, and did not therefore give vent to loudness or violence, *but found great range of tone possible, nevertheless.*

I strove constantly also to make my tones strong and full, and the *throat well opened.*

I found that giving voice to the emotions suggested by the successive thoughts, augmented them infinitely more than merely *silently* reading the page could do.

All the discipline and customs of social life and business life, in our time, tend to *crush* emotion and feeling. *Literature alone is brimful of feeling.* All good or bad poetry, and every thing but mathematics,—even metaphysics,—stimulates this emotional seat of life.

The intense effect I (Choate) have spoken of, which the speaking the words of a page in appropriate tones produces on me, I am somewhat puzzled to account for. It can be referred, I think, to an effect of sympathy, inasmuch as the tones heard by your own ear, though they come from your own mouth, seem as if produced by a third person.

Mr. Webster, I know, must have paid, at some time of his life, much attention to *delivery*. At Phillips' Academy, to be sure, he wasn't much of a speaker, but at his college he was *the best speaker* of his class. He was always selected for the Fourth of July orations, etc.

He himself told me (Choate) the story about his graduation. He had labored all through college to get one particular part at commencement, as he told me he had set his heart on it. That part was one always given to the best speaker and orator. But, although he was by unanimous consent thought certain of it, the part itself was in the last term of his course *abolished*, as he thought by the contrivance of one of the college officers who was ill disposed toward him. He told me himself that no disappointment of his whole life ever affected him more keenly. (This he said to me before he lost the Presidency.)

This circumstance shows how well he must have cultivated *oratory*; and I know, and I tell you, that *rhetoric*—at least so much of it as appertains to the artificial arrangement and distribution of proofs—had received much study from him. I recollect his speaking to me once about the propriety of placing the weaker arguments in *the middle* of the speech.

When you (that is, the author) have heard Webster, you have heard an old man, and not him as he was. His second Bunker Hill speech, I agree with you, was a complete failure and break-down, as regards delivery. I sat behind him, and was never so distressed in my life.

It's very difficult to discuss different *kinds* of orators intelligently, for the divisions are so ill defined, that we talk according to our ideal of different kinds, and mean diverse things by the same words. Consequently, it is often a dispute about mere words. One orator is very

emotional, another intellectually brilliant, and others combining these elements in undefinable proportions.

Macaulay and Jeffrey are samples of the comparatively passionless orators. They are men of no strong, ardent beliefs—not any very tenacious *holdings* of faith in any thing, I reckon. (Not atheists, however.) They prevail by diction and manner. Macaulay I deem the finest talker I ever saw or knew of in any country.

Fox was incomparably superior to *Pitt* as an orator. I never could fully get at the secret of *Pitt's* power as an orator. He wasn't impassioned, though he had a fine voice, and his diction was fluent and fine.

Pickering once told me he heard *Pitt* rise at 3 A. M., after Windham and Sheridan and others had all spoken; and really, in comparison, his grand volume of sound seemed the roar of a lion compared with the chattering of magpies.

No doubt Pinkney admired *Pitt*, for he had the same kind of intellectual oratory. *Pitt's* great source of power in oratory, after all, I'm disposed to think, was *character*. His position was so daring at the *head of the British* government, first against the coalition, and then against the continent; and he always showed such unbending nobility and dignity of mind. Still, as Burke said, he was “the sublime of mediocrity.”

Chatham was not often pathetic, but terrible and grand and sweeping.

Wirt, at thirty-five years of age, was, I think, the most interesting man of the profession in our country. Webster and Pinkney had not then come out in national relief. With them letters were an after acquisition, with Wirt the literature was originally congenial. I didn't hear him in his prime, for the winter I was in his office he was

struck down in the middle of preparing a great case by a sort of paralysis, brought on entirely by over work.

He told me (Choate) once that he sat right behind Webster in the Dartmouth College case, and he didn't hear anything of that pathetic peroration which Goodrich describes ; at least he wasn't impressed with anything in particular about it.

I think Wirt's argument in Burr's case, and on the motion to exclude all the testimony as to what occurred in other parts than the venue, his greatest effort on record.

Irving, the English divine, had the deep convictions of religion as the fountain of his eloquence.

Chatham's convictions and emotions were bottomed on the broad basis of profound convictions of *right and wrong*.

Pitt had, as any English nobleman's son designed for oratory has, an admirable training from his cradle. He never heard any but the best words and the noblest sentiments, and the most cultivated and often eloquent *tones* from his youth up.

Everett, I don't think a selfish man. He has always been devoted to his family. His wife has been sick, and his children been sick ; and for many years so assiduous has been his devotion to them that his disturbed nights and sleeplessness has broken down his health. He has been in that household man and woman too.

I (Choate) talked with Daniel Webster about the matter when I was applied to on behalf of *Professor Webster*. He entirely coincided with me as to the proper line of defense—that it must be *an admission of the homicide*.

Mr. Choate intimated that at once, in the very earliest stage of the matter—the defendant had just been examined in the Police Court—the defendant's counsel should settle

on their certain line of defense, and put forth some theory which should allay the tremendous popular feeling rising fast against him—a feeling whose outside pressure would be irresistible in the Court on the jury at the trial. And then he added, if they mean to save him, there's not a minute to be lost.

(Mr. Webster said to me (the author) some time after he had this conversation with Mr. Choate, that he had not the least doubt of Professor Webster's guilt.)

Mr. Choate observed, when a speaker gets old, say fifty, it may be necessary to *stimulate* a little to revive his sensibilities. But youth should never rely on it. However *tea* or *hot water* are *natural excitants*, and will not *injure* or exhaust even youth. Hot water was Burke's stimulant. He had beside him during the writing of his master compositions a pitcher of it, which from time to time he quaffed. But if for any *very trying* occasion a man finds it necessary to stimulate, *two glasses of brown sherry* is, I know by experience, far better than any other wine.

I don't think, as some say, that our climate is unfavorable to orators.

1853.

January 15, 1853.—Great patent case, which had been fought for three weeks, ends in verdict for Choate.

Mr. Choate told me his adversary managed the case very well, for one who didn't understand all the depths and shoals of patent law. But my own course has always been, said he, when I am for the defendant in a patent case, to insist on the non-infringement, and not to rely too much on the non-novelty of the plaintiff's invention.

This latter course the adversary in this case took, *i. e.*, impugning plaintiff's patent.

He was wrong in this, said Mr. Choate ; for in this case the plaintiff's patent don't teach you how to make the defendant's machine. That's the test.

My adversary's argument was very beautiful and effective in rousing some emotions in the breasts of the jury ; but these emotions were none of them so immediately connected with the defendant as to be of much practical service to him.

April 13.—Mr. Choate began talking about Sir Henry Bulwer's remark which he made while ambassador to America, that no northern orator could speak grandly without stimulants, owing to the tamer current of their blood. Choate said he didn't believe it. The Northerners were not wanting in endowments of temperament, but they only wanted *development*. He considered our social customs and training at the North crushing to all ardor of oratory. The world, said he, is beginning to demand a higher training for orators.

Pinkney, I (Choate) heard make the most delightful speech I ever listened to ; but it was an intellectual delight, for Pinkney decidedly lacked sensibility. His eloquence was artificial.

Mr. Choate said, in another conversation, that now the Whigs were so defeated, a great American Union party must be formed, including Missouri and the far West, whose purpose should be to build up America—at home, her home interests, etc., in distinction from foreign aggressive conquest.

1854.

March 5.—In trying a cause to-day in Court, Mr. Choate suddenly turned round to me, and without the least preamble, and still paying attention to the cause,

said, I've just been reading Vinet's book on Pulpit Eloquence. It's the best thing I've seen. Go and get a copy, and tell them to charge it to me, and I'll put yours and my name in it; then read it through, for it's capital. Having jerked out these words in a *violent* whisper, he whirled round, and was far back in the middle of his case again in a moment, nor did he have any more leisure to talk on that day.

March 26.—Talking over a case with Mr. Choate to-day, I remarked to him (what probably most young lawyers have found) that the more I got into practice, the more I liked law. Like it, said he, of course you like it! There's nothing else for any man of intellect to like. Politics is shifting, unsteady and capricious; and they don't satisfy the intellect.

May 6.—Had conversation with Mr. Choate to-day, on law, etc. He said Noon Talfourd's Essay on the Bar, etc., was greatly exaggerated in its belittleings and disparagements of the bar. The answer to what he, Talfourd, says, is to be found in the line of superior men in England, the line of *stocky* first-rate Englishmen who have given themselves to the law.

Mansfield, for instance, was as cultivated and refined and lettered as Ned Everett.

The Bar can be looked at as little; as having, as Cicero said, all its controversies about "three kids;" but, on the other hand, it is capable of being regarded with enthusiasm and devotion.

Wirt had too much letters, too much general culture; and he saw too clearly the unfavorable and little aspect of the law; while Pinkney, not thus liberalized, thought there was nothing this side heaven like forensic triumph. There is, though, a sight of truth in what Talfourd says, but if

you languish in the pursuit of law, read Quintilian and Cicero and enthusiastic legal writers.

At any rate you must have a profession, and if you are not first-rate in that, you will be nothing, and can not have *your own self-respect*.

What is always delightful and noticeable in Erskine is, that besides his fine diction and eloquence, a genuine enthusiasm for his profession ever breaks out, in constantly recurring sentences in his speeches, such as, "This shrine of Justice," "This revered magistrate," etc.

An article on Pinkney should show the distinction between rhetoric and oratory; between him who goes into the Senate for an occasional speech, *crammed* and gorgeous, and him who makes every-day business speeches, able and eloquent, like Clay and Webster.

The idea that there is a want of sympathy in the mass of the people with an educated man's mind is much exaggerated in general belief. Any fine thought or rich expression is apprehended by the common mind, somehow—*vaguely* at first, but so almost *any* thought is at first vaguely and uncertainly apprehended, by any but a trained mind.

June 27.—Mr. Choate called at my office to-day, to see its location. I had recently moved into it. After praising its facilities of location and light, he began to talk about politics. It was in the middle of the presidential term of Mr. Franklin Pierce. He said he thought the strain on the Union was now far fiercer and more dangerous than in 1850, or ever before.

He spoke of the Native American party. They have an immense fulcrum of power. Every laboring man of America who sees a foreigner ill-clad and conditioned, standing in the fields of labor, and underselling him in his labor, will have a native American ticket in his pocket.

That party has perennial springs of power. As a matter of policy, said he, I should advise you to join these Know Nothings.

June 28.—Having occasion to stop at Mr. Choate's house to-day, he came himself to the door. Said he, I'm all alone here ; come in and dine ; I've got some brandy I can give you, which was sent to me. It is *smooth as oil, but sharp as a sword*.

We sat down and he began as usual, at once, to talk.

Of dinner speeches he said—there was danger of being too elaborate in them; but that while there could be no fixed rule for them, they should be such as would make all say, “That speaker is a smart fellow.” They offer opportunity for much allusion and ornamentation, and for much preparation to be worked in, but all to be thrown off easily and *négligé*-like.

Tacitus, he said, he translated *daily*—but he had lately taken up an author as new to him as the Chinese wall—namely Pindar—full of gorgeousness and sententiousness.

Now, said he, I never work later than nine in the evening without being sick next day; but I always rise early in the morning to labor. But in College I never went to bed before one o'clock, and rose very early to Prayers, without then feeling it.

When we parted he said, You must come and dine with me alone here some day; and I'll let you know two days beforehand, for I want then a dinner *as is a dinner*.

July 7th.—In accordance with the intimation thus given, a few days after, Mr. Choate sent for me; and having ordered a very nice dinner, I anticipated that he would enjoy himself in partaking of his own good cheer with me. But when the day came, he was in the middle of a case,

which however went over to the next day; but he was too unwell to drink anything but a little brandy—*medicinally*, as he smilingly said, although his table sparkled with wines which an epicure might envy. His mind, however, needed no stimulus; and among many other things, he said—of Cicero: Cicero's course is thought by the German school to show him to be a trimmer in politics—but we must remember that the age was a very warlike one, and the Republic was in its last stage of degeneracy. And he being a pure literary man was as much out of his element as would now be Judge Story or Edward Everett, if the State were controlled by warriors. Cicero knew what he wanted well enough, but how to get it in the circumstances which surrounded him demanded some *trimming*. But on the whole, his course is *entirely defensible*, if we take into view all the surroundings.

The attitude of the New England clergy on the slavery question I disapprove of. They seem to be carried away with a view of duty as seen from one single relation only. A comparison of duties or a yielding of an impracticable good, for the far grander good of a nationality pregnant with happiness to generations—they seem unable to apprehend. The slave who was not reduced into servitude by us, can advance *no claim* of right to our aid. It is no business of ours. Then, as a mere question of rival philanthropies to him or to the nation, a treatise might be written, which should be built upon all the great ethical writers of ancient and modern times, and which should be at once comprehensive and rigorously logical, and which would settle the question. Such a treatise I at this moment know but one man who could write; that is Dr. Walker, of Cambridge.

Charles Sumner's position as to swearing to support

the Constitution *as he understands it*, I think entirely untenable. It is the lowest degree of Jacksonism.

Mr. Webster always used to say, *pale sherry* is good for nothing ; “he hasn’t anything to him.”

After talking about an hour, he said he had business in his office, to which he must go, but, said he, I will leave you in possession of the table, the liquor and the library, and you can have full swing there. And so saying, he went out.

I mention such little unimportant traits and observations as these, of his, because they show how simple and playful and natural this great man was, in his familiar and unrestrained intercourse.

In another conversation about this time, I mentioned to Mr. Choate that I had heard from a friend of Mr. Webster’s that he said he wished he had never been born, and added that the sentiments of Frederic of Prussia, as contained in one of his letters, suited him (Webster) exactly, and coincided with his own views.

Mr. Choate said that this must have been a momentary fit of gloom, occasioned by disaster ; for Webster was rather a constitutionally happy man. Undoubtedly he had been greatly exercised in mind upon religious themes—upon our present and future relations with God—upon the *great mystery of life*. But as he grew older in life he grew more attached to it. This is the natural operation, said Choate, of time. A man is not happy in the world till he has *secured a position* in it. Till then he is a *fresh-man* on the earth. Every year after that generally gives him new associations and satisfactions with the world. An old man never commits suicide—it’s your young man who squanders happiness.

November 18th. — Mr. Choate said to me in court,

day, I'm going to try to get you an invitation to speak at ——— college ; and, if I accomplish it, you may *take the roofs off of six houses*.

December 4th.—Mr. Choate gave me an instance, to-day, of his minute attention to trifles, in the midst of the most vast and engrossing concerns of business. He came looming into my office simply to explain and regret that a certain invitation had not reached me, which he knew had been sent. Thus attentive he always was to the least minutiae, of the wants and feelings of friendship. I never asked him to write letters of introduction, or to do the friendly office of saying something to individuals which would promote desired objects, that he was not *sure* to have the letters all written at the time named, and the words all said to the persons indicated.

He never forgot anything in his heart or in his head.

1855.

May.—Mr. Choate, while still suffering from the effects of an operation on his knee, asked me to drive out with him in a close carriage. The period of his gradual convalescence from this sickness was almost the only time I ever saw him in a close carriage. He never rode or drove. I never knew him, in all my acquaintance with him, to take the reins in his hand on any occasion. Nor did he ever ride on horseback.

On this occasion, we drove round through Cambridge and by the colleges, and through other roads of the lovely environs of Boston. With his limb bolstered up across the carriage, he lay back and talked. He hardly noticed the scenery, but ruminated, soliloquized and conversed. Many things he observed which it would be hardly quite delicate to bring to the public eye.

Kansas was now a fruitful subject of apprehension in the republic. Mr. Choate said, In Kansas, blood will be shed yet ; but that is not the great danger. The danger in our Union is, that a State, *qua* (as) a State, in its sovereign capacity, shall declare war and take the field. Whenever a State, *qua* (as) a State, shall come out against the national government, we can't do anything ; for that which ordinarily would be *treason*, is, as it were, saved from being so by the flag of the State ; certainly, at least, so far as to save the point of honor.

Herein lurks the great danger of our system of government.

While I have been sick, I have been reading Æschines' Oration on the Crown, in order more fully to master Demosthenes by first mastering the *attack* which he repelled.

Every day but two during my whole sickness I've read and studied. My mental powers have been through it all perfectly strong. In the morning I have had, during all my confinement, in bed or up, a regular course of reading. In the afternoon I read miscellaneously till the evening paper comes. And I get along very well, though I find myself sometimes anxious for the newspaper to arrive ; and you know, he added, laughingly, a man must be in a bad way when he finds himself *impatient* for the evening paper.

To appreciate the resoluteness of this intellectual activity, the reader must remember that this sickness had been so violent that Mr. Choate was compelled to take ether for a severe operation upon his knee ; yet every day but two *he had studied*. He told me that when he took the ether it was all very pleasant till the moment came of surrendering consciousness—*then* it was like death.

He went on in this same conversation to observe, that without a methodical course of reading, any one who has much leisure and freedom gets ennuyed.

It's a great advantage for man, said he, that separate governments are instituted, where political offenders may find refuge from each other. In the Roman empire period, the fugitive from the Cæsars could not rest anywhere from the sleepless eye and the avenging sword.

Cicero might well put out his head from his litter to meet death ; for, to no shore, in safety or in honor, could *he* fly who had filled the consulship of Rome.

Returning to American politics, Mr. Choate said, the Know Nothings will elect the next President, if they carry Virginia, as I think they will. Fillmore or Seward, probably the former, will be the man. [They didn't carry Virginia.]

July 30.—In conversation to-day, Mr. *Choate* said he thought George Hillard's argument at Dedham on the slave case suit against the City was about as eloquent and fine a performance as he ever heard in court.

He said that during his long sickness Edward Everett came two or three times a week to see him, and read to him his journal and other things. Said Choate, I love Everett more now and understand him better than I ever did before in all my life.

He spoke of politics. Said he, I think the state of politics here is now so hopelessly discouraging that a man may be pardoned for entirely abandoning it for the present, and giving neither aid, advice or anything else to his country. Though, generally, I consider it wrong to desert the interests of your country, merely because you don't like its management.

September 26.—*American Politics.*—No one, Mr. Choate

said, could do anything in politics of consequence, except by making it a deliberate experiment, business, and occupation. If a man does that, he runs all the risks of being thrown over any moment by a fickle and demagogue-blinded people. You have to mix for ever with people whom you can't shake off; while, also, you have to *labor* with much more serious and brain-taxing themes (if you aspire to the rank of statesman, not a mere politician) in Congress than at the Bar. At the latter, a man has his side given to him; then he labors to sustain it. In politics you have to cast and forecast from a wider and much more difficult range of considerations, what side the party shall take; as well as then, afterwards, go through the toil of supporting it; and, of course, no man of decided abilities wants to go into politics, except in anticipation of marching on through high steps to great posts.

Lastly, if a man goes much into politics with Law, he will have no leisure for much cultivation and gratification of tastes—for literature, nature, etc., and all the finer sensibilities.

It is well enough, at some portion of life, for an American to go into Congress for a brief time, if opportunity offers, as a sort of recreation and for pleasurable observation; but the *great aim* of a young man should be legal advocacy.

If I myself could be permanently and happily in the Senate, he went on to say, I should like that better than anything in the world; but to be just enough in the Senate to be out of the law, and not enough in the Senate to be a leader in politics, is a sort of half-and-half business very contemptible.

Then, too, if one did go much into politics, the having a profession of law to retire to, would always afford a graceful pretext of retiring in dark days. Mr. —, now says

he retires to take care of his private affairs. Whether he does or no, nobody believes him, but all suppose him sulking at home.

Now, from all my experience, I am satisfied, said he, that in the long run a lawyer in Suffolk county can have, if he be *bright and quick, three or four hours a day, on an average, for his literary and leisure occupations.*

Moreover a New Englander, unless he be a Democrat, must be generally shut out from national honors.

William Wirt's reasons for avoiding politics, I think, said he, rather exquisite; especially considering he came from Virginia where politics are so universally indulged in, and literature has so little place.

Opium, said he, I do not think Macaulay takes to any extent; but I wonder how long it would take to affect the constitution with it. *I never took any in my life*, except as laudanum for tooth ache, and that made me stupid.

Macaulay I think very tiresome to read long. He is a fine specimen of delicious vices of composition—more singular than Seneca. He has, however, an abundance of rich and rare thoughts; but the chief fault is his unvarying positiveness and certainty on all themes and topics.

Julius Cæsar I hold a much higher and more interesting character than Napoleon. The latter was always a parvenu after all, always vulgar, and in some things little.

He pointed to a bronze bust on the mantel-piece. This bust of Demosthenes, said he, gives no intellectual or exquisite developments. It looks like a coarse nature, and, as far as regarded his animal parts, Demosthenes was so; but the force of his genius, and the fire of his mind and character, broke through and conquered all.

Opposite to it was a bust of Cicero. This head of Cicero, said he, is perfect. He was a true literary man,

but early leant toward oratory. He had the *large mouth* which eloquence almost always gives its possessor. Mr. Webster had a large mouth.

Everett, I think, will be the next Whig candidate for the presidency, unless Seward is. I think him the most truly sympathetic with the mass, the most progressive and democratic of all his Beacon street set.

H. G. Otis, I think, was, perhaps, a bigger man than Everett. Everett is too great for the snobbish pride of ancestry in America; he is above it. Neither Otis nor Everett take audiences off their feet; but Everett sometimes overwhelms them by a beautiful picture.

Fisher Ames, Patrick Henry, and Whitefield, were, I think, the greatest orators out of the pulpit who have flourished in our country. Ames was most highly emotional, pure, and good. He was preëminently fond of the Bible; especially Deuteronomy was always a marvel to him.

Caleb Cushing and Rantoul are both rather Continental than English minds. Cushing's power is a ceaseless, strong, mental capacity. It makes no difference to him what he's at, so long as it commands the attention of man. He'd as lief be one of us, playing pettifogger, as statesman. He showed very great power as judge of our Supreme Court. Had he stayed there, he would have been the first Nisi Prius judge in the Commonwealth.

Rantoul was a splendid idealist. I don't know that he had more heart than Cushing, but he had enthusiasm for his idealities. In the long run he might have come out ahead of Cushing.

Speaking of a ticket for State officers which he very much disliked, in a State near by Massachusetts, he said, I fear the people of that State will wake up some morning and find themselves under a *dynasty of blackguards!*

I consider, he remarked, that Sir William Hamilton has the best command of English of any man now living; better even than De Quincey.

Mr. —, said he, is a good fellow, but I'm inclined to think he has nothing in him. He's a Fisher Ames without his genius.

November 11.—I was gratified yesterday by a long-promised visit from Mr. Choate. He came out of town to my house, stayed some time, pulled over the books, and talked freely. The Know Nothing party, he said, is the one for every young man to join who has any hopes. I, said he, have never said anything against the Know Nothings. And at this moment all the leading Whigs of the country are either of them or tending to them—Clayton, Bell, McLean, and others. Now that the Free Soil leaders are discarded, the Whigs have really no leading difference with them. The "American" sentiment and Slavery are really the only questions absorbing to the people, unless a war arises. The American sentiment must be powerful, practically, for it takes hold of the grosser and most vulgar sensibilities and ideas. Everybody feels bigger, as an American, for seeing a raw foreigner beside him. It comes right home to 'em. If they manage right they'll make the next President—Bell, or McLean, or Fillmore.

Men have their periods.

Otis Lord I think one of the very ablest men in this State.

We can't tell whether Sumner is to be chosen again to the Senate from this State, till the close of the session of Congress this winter, for there'll be a tremendous Kansas debate there.

S. S. Prentiss was damaged in the gulf of gaming. Wellington, after Waterloo, was seriously involved by it.

Love of excitement is what drives men to it. Wellington, after being in battle thirty years, couldn't settle down to *common* life. But afterwards he got interested in public affairs, and that occupied him.

France is the first power in the world, now. But I don't see any evidence of great mind or power in Marshal Pelissier, although the taking of Sebastopol was a marvelous feat of arms. But it was the French army which did it. I shouldn't be surprised if they made peace this winter, in Europe.

Cicero.—There's an article in the Westminster on him. But there's room yet for a great article which shall do justice to him. The Germans have done nothing but attack him. But it isn't enough considered in what a position he was. He was a civilian, and we, looking back and seeing now what the men of arms were going to do with the State, judge him as if he knew. (Choate was always stirred up when Cicero was disparaged.) I showed him some horses and large stalls, but he admitted that he took no interest in horses, nothing like what he did in a book. I never could get up any interest in them particularly, said he.

Macaulay (he went on) won attention for his Parliamentary efforts by his previously-acquired literary repute. His fame, though, is all that of literary speech-making. For all his writing is in the forensic style.

1856.

March 15.—Had a talk with Choate this afternoon. He observed, Macaulay's 3d and 4th volumes are powerful; but all his History is a departure from the established rules of that sort of composition. He is far too *emphatic* and *certain* in his facts and conclusions for history. He goes

at the reign of William with a power and a pomp worthy of the History of the Roman Empire. I like Gibbon better ; there is more of an air of learning (in its technical sense) about him ; not pamphlet and detail learning, such as Macaulay bristles with. Indeed, I like Prescott's historical style better.

Bolingbroke I had always a profound admiration for intellectually. He stands, as a speaker, among the very foremost of those who have ever spoken in England. He was, I think, a cross between Chatham and the younger Pitt ; he spoke better than the latter, but had not the tremendous outbursts of power of the former. But his diction, his command of trains of thought and acumen philosophically, gave him for general debate great advantages.

The best article on Cicero is one by Frere, in one of the Reviews. He admits that Demosthenes would be considered at the head of men for orators ; but then goes on to say Cicero is to be considered *also* as a *writer*.

The best thing on Demosthenes, I think, is Legare's article in the *New York Review*, not for critical analysis of style so much as for all the influential part of Demosthenes—that which will operate on succeeding generations in their education and standard for oratory.

There's a capital thing on Bolingbroke in the *Westminster Review*, by Edward Bulwer.

Speaking of the President's proclamation in regard to Kansas, Mr. Choate said he must put down border incursion, or the government would be *defiled*. Then he paused a moment, and said he, What is that fine passage in Gibbon, where, speaking of the reign of Justinian, he says the world is *defiled*, or some such word, by a plague, or anything which diminishes greatly the human species ? I suggested *desolated* ; but he thought that was not it.

In this is observable his careful notice and recollection of exact expressions and phrases. Probably it was years since he had read Gibbon, yet here he was minutely recalling not only his larger facts, but his minute diction.

He said of his Lecture on the Poet Rogers, announced for Monday, the 17th, that he *had prepared it quite carefully*, and, *therefore, it would not probably be a popular discourse*. He was going to discuss poetry somewhat, and upon the whole, it was written more for his own gratification of congenial and pleasant trains of thought than for the public taste. It would please only a cultivated audience. The characteristics of the age he should describe only so far as to picture its thunder and lightning, with whose electricity the poets of the day in common with others became charged. In no other way could he describe the age without breaking the unity of the discourse.

He should speak only of what *might have been remembered* by Rogers ; he is a clasp of twenty-five great years. I couldn't do otherwise, however, he said, than to make a splurge at the close about Hiawatha ; and I am going to yield so far to Americanism as to pay a tribute, in winding up, to three American poets who are my own favorites, Dana, Bryant and Longfellow. Hiawatha, he said, was more striking and indicative of the poetical fancy than he had originally supposed ; for its repulsive measure repelled him at first, as it must always prevent its permanent popularity. But Longfellow was a better poet at this moment than Tennyson.

Fillmore, he thought, had no chance for the Presidency. The Native American organization, as an organization, if they took him up, would give him a chance ; but they seemed rather to repudiate the nomination. But probably the Democrats will elect their man.

Pinkney must *naturally* have spoken eloquently ; for he had a great repute as a young man in Maryland before he got his *words*. Webster followed him in his last argument and sounded bald ; but he had a grand *dignity* in opening, which did more than to compensate for any deficiency in gay words.

To my remark, that Pinkney liked Pitt's cold sonorousness, Mr. Choate said ; Pitt had no cold sonorousness, but a majestic dignity of warmth.

Cicero I (Choate) never have read without being encouraged and strengthened ; his views of life are always healthy and cheerful and sound. I was not aware of the *vastness* of his vanity, however, till I read him during my sickness very much. In one of his letters to Atticus, he says, "I spoke with a *divine power* to the Senate. There never was anything like it."

I don't think, Mr. —— (a speaker) was on high key too much. I lost some of his lowest words, but that's inevitable, if you use the downward slide ; and the upward is French, and bad.

March 25.—Mr. Choate's practical interest in his classics appeared to-day in a little incident in court. He was in a marine insurance case. The opposite counsel pronounced the name of the ship, "Neptunus," accenting the letter *u* in the penult as if long. Choate got right up, and wandered back to the rear row of seats, and asked me if I didn't think that syllable was short, and the lawyer was wrong. I replied, I thought it was long. Then, said he, rubbing his head and thinking a moment, I'm against you ; it's short. Having thus *aired* his classics briefly, he rolled back again into his place, and was lost in his law.

May 11, '56.—In a conversation with Mr. Choate to-

day, he said, there were preëminently three great masters of style in the world's history. Plato, who added little to the world's thought, but whose style of thought and diction stimulated ten thousand minds ; Bacon, and Burke. To these also may be added Virgil, as a splendid master of words.

Prescott's history gains on me, he said. I find him dull at first. Bancroft, notwithstanding his myriad faults of style, is making, on the whole, a pretty strong impression by his work as a history of American civilization.

He said he could only *compose* by shutting himself up to it. He could do nothing in the way of written composition if interrupted. In composing, he was led off, he said, into such a range of verification of fact or suggestion of thoughts that, for instance, in his "Rogers" lecture, there was hardly a sentence, I vow, said he, that I wrote, without glancing into more or less of at least fifty books.

June 19.—Colonel Fremont was nominated this month for the presidency. It led to a long and interesting argument between Mr. Choate and the author. The great portion of his observations it would not be quite proper to publish, although his opposition to the Republican nominee was unequivocally pronounced from the first. He observed. Every duty and taste is against this party of the sections. They will conduct a canvass every speech of which will be charged with hatred to one portion of the country. I never will march in their party. I don't altogether like the Democratic party ; and, at present, I propose to keep still.

I have never yet, however, seen the good argument that slavery wasn't better for the blacks than freedom, as regards merely their *sensations*—the gratification of their merely sensual wants. But slavery makes their whole

moral and intellectual character a *wreck* ; and if they are women, they are damned.

Brooks' act of scoundrelism in beating Charles Sumner was his own act, not the act of the South. It is *small* to make it a southern act.

A man of large, calm pride, will be above noticing the petty arrogance of the South ; just as Macaulay never for a moment condescends to notice the constant assumption of superiority which every Englishman feels for a Scotchman—and he is full of Scotch blood.

July 8.—Mr. Choate, a month after the foregoing conversation, told me he had made up his mind to vote for Buchanan, the democratic nominee for President of the Union. He said he felt it clearly to be his duty ; for the Fremont party was a sectional, anti-Union party, and nothing should be undone to defeat it. But whether he should say anything in the way of a speech, in the campaign, he did not know. But, said he, silence in such a sad state of things as environs us now, is profoundly ignominious.

In another conversation, he said, Fisher Ames was something like Everett. One of the most impressive things Ames ever said was when a murder or some shocking crime was committed in Dedham ; and the citizens turned out in mass to hunt the culprit, who had fled to the woods. Ames made them a speech, concluding, "Let no man sleep in Dedham this night." This sentence, they say, sounded like an awful adjuration.

I (Choate) saw Pinkney in his last argument, so furious that he turned right round, his hands both high in the air, and screaming at the very top of his voice. Pinkney was far more furious and *savage* than Everett, therefore more impressive. But then Pinkney had been always conversant

with affairs of real business ; whereas the course of Everett's life has taken him more amid idealities.

Cicero was very vehement, but he spoke *apte*. The Italians, in the Roman and the modern day both, are, after all, more excitable than the Greek. The stamping of foot, the frenzy of eye more common with them. Cicero the Italian, breaks out, you see, in his speeches, in every form of adjuration and invocation.

To wade through two or three volumes of Macaulay is perfect *pounding* of intense rhetoric. It is more tedious than Guicciardini ; he is an essayist, not a historian.

December 27, '56.—Choate sent for me to-day, to ask if I had ever written on a subject which he was contemplating for a lecture : "The influence of revolutions on civil eloquence" was the theme he proposed ; and, said he, I mean to take the ground that a revolutionary age of a nation is the time for the highest eloquence to appear ; and, with one or two exceptions, history proves it.

Clay and Webster missed of appropriate topics for the greatest agony of eloquence. They came to conduct and celebrate a nation already born ; but *Grattan*, who worked out the parliamentary revolution for Ireland is the greatest of her orators. His two best speeches are the one in 1780 ; and that where he begins "I address *a new nation*."

Grattan was a most remarkable man. All his life from boyhood he was haunted with the passion to be an orator. From the time he heard Chatham this was the main subject of his thoughts. He appears to have had a gloomy, saturnine disposition—rather *an unbeliever*, like all those men, Pitt and Fox ; that is, they didn't particularly believe *any thing* ; for they didn't think much about religious matters.

Cicero had no topics either—no agony of his country.

Rome *could be* in no danger from a foreign foe. He is a rhetorician—a brilliant mind coming forward and finding oratory a great arm of display, and studying it; and almost all the Ciceronian eloquence, therefore, is epideictic and panegyrical.

Demosthenes, on the contrary, had the rescue and salvation of Greece on his tongue.

So with Mirabeau, and the French orators. France had universal Christendom against her.

Kossuth had the revolution and hope of Hungary as his theme—a flash in the pan to be sure, but a great theme.

These thoughts, Choate said, he'd only thought of overnight, and they were crude, but he meant to work them out.

Chatham, he said, was an exception to the rule and principle he contended for.

1857.

January 15th, 1857.—Mr. Choate and Mr. George Hillard came out and dined with me a day or two ago; and the conversation was very interesting. I see that Mr. Webster, in his letters, regrets not having preserved memorials of the conversations of eminent men with whom he was thrown, and it is a just regret.

The eloquence of America, said Choate, now corresponds with the Livian age of Rome's eloquence; when the Consuls were coming home annually with new triumphs, when everybody was glad and hopeful. It is the *ascending age* of America.

But Cicero's age was the *descending* age of Rome. And there's a vein of sadness runs through it all.

One of the great characteristics of Webster's eloquence is, that he glows and burns and rises with the tides of hope-

ful passion of a great young nation. Moreover, he couldn't have got off the great Hayne speech in England. It's too eloquent, and brings in too many outside topics for their customs. They stand right up in Parliament, with their hands in their pockets, and *hum and ha*.

Hillard observed that Brougham as Chancellor, it was said, dashed off his judgments hit or miss. Well, said Choate, *any* decision was better than none; and at any rate, Wellington thanked him for it.

He spoke of a young Boston lawyer of great promise. He said, he is in danger of narrowing his mind. If he'd go into politics more his judgment would be liberalized. He goes on to Washington with me sometimes, and I observe that he's uncharitable and severe as to those he don't agree with. If he'd widen his observation he'd be more charitable and favorable in his opinions. I think that commerce with the political life of our country gives on the whole a better view of men, as to their abilities, etc.

He remarked that he heard Clay appeal to Webster personally to leave Tyler's cabinet. It was in the Vice President's room at the White House. It was only two or three minutes, but it was a grand appeal—very powerful. Webster never answered a word. He took it all kindly. He felt he was in somewhat of a false position. As Clay went out, though, he looked to me and winked.

Hillard remarked, that when Charles Sumner wrote to Webster, recommending him to take the lead of the northern feeling, he received it and considered it in the same kind, and not fractious or irritated way.

We talked of Cicero. I said that I had heard the opinion expressed that Cicero was not so popular with *the crowd*—the mass, as other speakers; and I thought *supreme* excellence never was *popular*.

Choate said, at any rate Cicero *was* popular—very ; and popular with the mass of the people.

Mr. Hillard said he thought Demosthenes was somewhat of a humbug. No such thing, said Choate. Why, said Mr. Hillard, the speech for the Crown isn't the greatest thing on earth ; Webster's Hayne Speech was as great. *No, said Choate, the Gothic language* could not make such a speech as the Oration for the Crown. It hasn't *got words* to make it out of, in the first place ; and then consider, also, that it was a defense of the policy Demosthenes had pursued for thirty years.

But how little we know or find of the remains of Demosthenes. Cicero can only say of him—" *dicitur audivisse Platonem ;*" but of Cicero a *hundred books* remain. I advise you to read his letters.

Mr. Choate then broke out in a denunciation of the modern Germans, etc., who denounce Cicero as a "trimmer." The truth was, that in his day arms and civility alternated in command ; and as they did so, he turned first to one, and then to the other, as the source of the power which he wished to invoke. But, said Choate, these *book men*, who know nothing *about affairs*, about actually *governing* men, and how difficult it is to steer,—for them to sit in their studies, and judge Cicero and Webster ! It's absurd.

After all, the only man among the living whom I (Choate) care to bring over *to appreciate Cicero* is Macaulay.

But, said Mr. Hillard, Macaulay never had any influence or real participation in practical affairs in government in England. He was laughed at by the men of business in government. Yes, said Choate, he's the *literary man*—literary temperament all over. *Cicero* had the lite-

rary and practical temperament, and power too, but the former predominated.

I want yet, said Choate, with enthusiasm, to write on Cicero, and do him justice ; and I would lecture on him, but I should inevitably be too polemical.

I get up at six (December) and *make myself* a cup of tea, which sustains me till breakfast—an hour of work. I go to bed at ten o'clock. Everybody ought to, who *works*. Tea is the best stimulant. But black tea is not so stimulating as green, not more so than hot water ; hot water alone is reasonably stimulating. *Burke* stimulated on it. Yes, said Mr. Hillard, and in Athens there were places in the streets where hot water was sold.

I have not regarded Benton, said Choate, (Benton was now lecturing here,) as a man of wisdom.

S. S. Prentiss, both Mr. Choate and Mr. Hillard concurred in saying, was a marvelous orator ; but Choate thought that strength of understanding was among his very highest powers.

Choate said : Caleb Cushing's knowledge and power of labor was wonderful. He is like Brougham, but a better writer, though not so good a speaker.

1857.

January 20.—Mr. Choate to-day argued a heavy insurance case against Mr. George Hillard with great vehemence, energy, and felicity ; and it shows the rapid and wide play of his mind that he had hardly finished his peroration, when he turned round to me, and began to talk about a literary theme which he and I discussed the last time we met. Said he, I was wrong in deeming Cicero an orator who would not support my theory that the greatest eloquence is only born in revolutions. I have looked

that whole subject over again since, and I think him eminently an example in point ; and so I mean to say in my lecture this winter.

February 3d.—Mr. Choate remarked, in talking with me about editing a volume of his Addresses, forensic and general, that he was willing I should do it, and while he lived he should suffer no one else to do it. But, I think, upon reflection, he determined that nobody should do it ; for I never could get him to do his part in the preparation. And without his own revision he would not consent to any authorized publication. On the whole, I think he was content with traditional preservation.

His lecture on the Sea, which was extremely popular, was stolen out of his pocket, long ago, but, he said, for six years afterwards, he could have repeated it word for word. However, said he, I think I can dig up a good deal of it out of my mind, with you now.

He remarked on the very evanescent nature of traditionaly repute—in reply to my suggestion that he did not take half care enough of his fame—and observed how entirely Samuel Dexter had faded from memory ; of whom, said he, I used to hear the elder generation of judges and lawyers say that he had made arguments greater than Webster's. I didn't believe it, though, for all that.

March 23.—I introduced a young man of letters to Mr. Choate to-day ; and talking about Cicero's letters, how superior to Webster's, it led him on to Style.

Tacitus, he said, was far richer and more compact style than Cicero's ; his was a *spoken* style ; but Tacitus was the *Macaulay* of antiquity.

If, however, you want letters superficial in thought but attractive in manner, etc., read Pliny's.

Pliny and Tacitus and Seneca lived under an empire

and *in the favor* of the Prince. They, therefore, were, as the world went, *great men*. But their lives were of an easy, epicurean intellectuality, guarded in their speech and writings by fears of the emperor, who nevertheless favored them.

Pliny was happy in this.

But Tacitus was too deep and capacious a nature to be content. He was deeply learned in Roman history, and, therefore, impregnated with all the swelling sentiments of Roman history and grandeur.

But Pliny was a more shallow nature ; and, therefore, he was *happy* in the imperial sunshine.

I spoke of Bolingbroke's style. He said, it didn't amount to much, except in his speeches. His style of diction, and ease, etc., must have been delightful *spoken*. Bolingbroke was deeply versed in history and metaphysics, especially moral philosophy.

Those are the fountains for eloquence, and literature is the fountain for language ; that is, I mean, said he, a true eloquence, a perennial eloquence, not a holiday eloquence.

September 22.—Conversation with Mr. Choate a day or two ago.

I wanted to know if he contemplated going on to the United States Supreme Court Bench in place of Curtis resigned. He said he had received an intimation that he could have it, and had no doubt he could have the post, if he desired it ; but that he would not on any account spend a minute in Washington, absorbed, as he should have to be, in his evenings in labors and consultations, and in his days in court.

Here said he, I can do just as I please ; I can earn in three months as much as their whole salary, and I can work, more or less, as I please.

But I should like very much I confess to *revise the whole law* with a fine library at command. (This legal appetite shows the real vigor and aptitude of his mind.)

I asked him if he did not begin to find the vehement labors of advocacy less grateful. He said he should like to retire rather from active practice to quiet *office business and study*.

Campbell's last volume of the Chancellors, which he had just been reading, he vehemently condemned. Why, said he, he writes like a gossip, not a jurist. He picks up all the exaggerated stories of the Bar and retails them as gospel. His style moves at a sort of jog-trot pace; and the whole impression made upon you by reading him is not an elevated one; you are rather ashamed than proud of your profession.

But how different Talfourd! In Campbell, a lawyer of many years, there's no strain of comment and high lament over his cotemporaries, like that burst of Cicero—"When I first heard of the death of Hortensius," etc.

Talfourd's best monument of his mind is his essays. That on "The Bar" is fine, where he argues that the Bar is not the place for *high genius; which is true as the Bible*, though it's sad to think so.

Everett was just as much of a figure at his first coming on the stage as now.

I remarked upon the exceptional fervor of his last oration before the Harvard Alumni. Yes, I can well imagine it, said Choate, for the subject and the place touched all the best and most delightful enthusiasms of his life. His theme was Studies and Education; and he must have recalled in his own mind the first rush of his enthusiasm for letters, when he came bounding on the stage to address

Lafayette—an infinite *future* brilliant before him, and an infinitude of hope.

Every thing that he loves was there; in his thoughts, his delightful studies, his ideals, his romance.

I (Choate) read Bayne's books (Christian Life, Essays, etc.) with eager pleasure. A little florid; but he has thoughts of great grasp and truth, and he is eloquent. I read all of him.

Here was this singular man, lying on a sofa; as he said shut out of his library by men cleaning—and “that's enough to make any man sick”—here, sick on his sofa, and meditating, not upon the common and cheap personal details which crowd the minds of common men, but revolving such themes as Cicero's description of Hortensius, the dignity of his profession, the elevation of mind of Talfourd!

It was a marked peculiarity of Mr. Choate's talking, that while it was not dogmatic, it was isolated,—as it were soliloquizing. It was all out of his head. He begins instantaneously to pour forth intellectualities, and he pours on, and on, ceaselessly.

October 28th.—Had an *accidental* talk with Mr. Choate this morning in his office. I advised him to give his old lecture, before the M. L. A. this winter. He went right on (turning from his law papers with which he was busy) to speak of *Grattan*, of whom his son-in-law had just imported a portrait engraved.

He said, Grattan was not a speaker for a promiscuous audience, a stump speaker. He went *over their* heads altogether.

What then, said I, made him at all popular with the multitude?

He replied, It was his vehemence and patriotism.

Wouldn't vehemence always do the business for the mob? said I.

No, if a man spoke poetry it wouldn't, said he.

Tom Corwin, of Ohio, he thought an orator. He would fill the cup of your eyes with tears in a single sentence. He never spoke with *vehemence enough to have his voice lose its melody and sweetness.*

Richard Lalor Shiel spoke somewhat like Robert Rantoul. *Rantoul* was kept down as a mere orator, by his *learning* and his *truth of intellect.*

The Agricultural Address of Everett is a *master-piece of pure rhetoric*, as well as full of knowledge and scientific accuracy. You always see his unadulterated and singular *genius* in whatever he does.

I broached to him a project of a book on "Men of Destiny."

Choate, upon the suggestion of this theme, went right on to present views upon it, of profound and wide-ranging thought, as if he had been studying and cramming on it. I was surprised by the sweep and the accuracy of his thoughts and his learning; but most of all at their originality, and the prompt command of them which he showed; turning off as he did, suddenly, from law papers and thoughts.

Why, said he, this very morning, by twilight, I was reviving my thoughts of Cicero; and I think I am better able now to write about him than when I lectured on him. For I understand more fully the relations he sustained to the great practical leaders of his day.

"Take care of my interests at Rome," they one and all write to him from the provinces; they leaned on him.

And then Mr. Choate dashed off at once into a long extempore talk, in which he seemed to survey off-hand the

whole field of ancient history and ancient heroes, and their mutual relations.

Alexander the Great, he said, would Grecianise the East. To that mysterious undefinable East, all the world's great conquerors have turned their thoughts and dreams. Napoleon had an idea of eastern sway.

The Greek empire survived the Roman in the Byzantine civilization, which fell in 1492. Greek life had more vitality than the Roman. Grote (the historian) closes his last volume with a *sigh*; as if, with Alexander, Greece ended.

Mr. Choate then mapped out a long series of books and Review articles, which ought to be read in preparation for a book on Men of Destiny.

He went on then to Rome and Cæsar. Cæsar ended the cabals and was a blessing to Rome. The Roman Unity, bringing all the world under one scepter, prostrating all separate nationality of feeling, was eminently propitious for Christianity.

It is very important, he said, to get the *modern* German thinking on classical subjects, not Lempriere, etc.

Hannibal we know through Livy, as we used to know France through England. Hannibal, in his campaigns, represented the *rest of mankind* against Rome. *Carthage* was not settled by descendants of Ham, but by those of *Shem*, who ruled the whole Mediterranean shore. *In Hannibal*, as against Rome, *the rest of the world was incarnate*.

Returning then to Greece, he said, Pericles gave Art to Greece. Themistocles and his colleagues gave her her historical existence. Themistocles gave her her navy.

The Persian war was The Oriental *versus* The Modern civilization.

Had Persia conquered, Greece would never have been ours in history, and though Rome might have withstood the eastern civilization, neither Rome nor the world would have had Greek art and culture. So, Themistocles was a "Man of Destiny."

1858.

January.—A very interesting and important criminal case was tried in this month, in which Mr. Choate made a highly effective argument for the prisoner. He afterwards talked over the case with me.

Speaking of the cross examination by one of the counsel in the case, he said : It is good ; but he seems to me too much as if he intended to *go at* the witness. He has a defiant, jubilant air and tone, as if he *meant* to break him down. Now, I (Choate) think the examiner should always seem to be after *truth*. Never *come down* on a witness, unless you are satisfied yourself that he is lying.

Webster never did so. He trimmed down the loose statements and exaggerations of the witness, and got his matter down to the very bone. But he never exercised himself, in driving the witness into *little difficulties* and cornering him in a pettifogging style.

The jury always sympathize with the witness unless they are convinced he is lying.

He gave a striking illustration, in this case, of his chivalric sense of professional honor. A dispute arose between his junior and the counsel for the government ; fierce, long, and bitter. In replying, the attorney for the government made a distinction between the senior and the junior counsel, characterizing the *former* as a gentleman, etc. Mr. Choate immediately arose and said, that if it was intended

thereby to imply his disapprobation of the course pursued by his junior brother, he must disclaim such a distinction.

Speaking of this to me, he said, I think my associate was wrong, and ill-timed in his remarks, but I would always sacrifice even my client to my associate's feelings in such a position as that. To appreciate the professional kindness of this, the reader must remember that "the client" was Choate's god.

Mr. Choate said further, that his only objection to Mr. ———, for a judicial office, was, that once, in Court, he let his junior be attacked savagely by an older lawyer, and did not defend him spiritedly, right or wrong.

In another conversation, Mr. Choate said, Read the law reports—the cases, not treatises ; nobody reads treatises.

Read Shakspeare. To speak to a jury a man wants maxims, aphorisms, historical allusions. Shakspeare is full of the former. Read Euripides also. Pinkney used to study dictionaries of different phrases for the same idea.

A real, genuine love for Shakspeare is rare in America. Read him critically with Schlegel.

A man gets copiousness for speaking, not by mere words, but by fullness of thoughts, knowledges.

In this country especially, Law is the true training for politics—better than metaphysics or logic.

No occupation is intrinsically satisfying and delightful in itself, without reference to the end to be attained by it, except Poesy and Painting. Allston used to say, that if outside things wouldn't trouble him, he should be supremely happy in his studio ; and I have no doubt of it. So, too, with the truly great Poet.

All great lawyers are great wielders of facts.

Cicero's face is sad and doubtful. There was good rea-

son for it. He was surrounded by pagans, and he knew they were all wrong. He knew that far beyond all pagan speculation, there was an ocean outside *unexplored*.

Bolingbroke was the first orator of England. So noble a presence. His sentences have a grand and majestic flow. His diction good, but not superlatively so ; great variety of manner. The union of manner with matter is the thing. The effect of words is wonderful. Even with thinkers, the effect of thoughts when properly dressed is exaggerated.

Still, as a composer, I stick by Burke ; but he was tame and dull in delivery. Delivery is every thing.

There are many pages in Cicero which are common and cheap ; the thoughts are undressed.

Many pages in Brougham are as good in style as the best of the ancients.

Canning had a most choice and harmonious diction.

The States are, as it were, the Police of the Union.

END OF CONVERSATIONS.

I have the record of no other conversations which I deem it proper to publish. In the foregoing, I have carefully eliminated every thing which I thought might wound the feelings of the living, or be ungrateful to the friends of the dead.

In some cases, as in regard to the Republican party, I have put down much of what Mr. Choate said to me, because it was in accordance with what he said in public, and made no secret of.

Should anybody feel rightfully aggrieved by any thing he said, which is here recorded, no one would be more surprised and regretful than the author of the volume.

CHAPTER VI.

EXTRACTS FROM LETTERS OF MR. CHOATE TO THE AUTHOR.

A FEW extracts from the following letters of Mr. Choate, are given, to illustrate the easy, sportive, kindly and yet thoughtful tone of his mind in familiar epistolary composition.

The letter succeeding contains Mr. Choate's theory and opinion upon collegiate education. It was written to a common friend of his and of mine, to dissuade me from leaving Yale College in the junior year ; a step which was contemplated—not, as he supposes in the letter, from pecuniary considerations, but only from the natural impatience for active life common to "Young America."

BOSTON, 5th May, 1846.

DEAR — :

You have expressed so much friendship for young Mr. Parker, that I take the liberty to repeat to you in a note what I once said in your presence upon the subject of his leaving college before the end of his regular course.

When I was a boy I recollect that a judicious and dear friend said to me—himself an energetic professional man—not a graduate, that a young man had better borrow money at thirty-three per cent. to supply himself with a collegiate education, than not to have it. The observation of every year since has confirmed the justice of this remark, as indeed—such is the progress of competition and of mental

culture in this country—the remark itself *grows truer* every year. No diligence in a profession ever can meet the want of that liberality, breadth, comprehension and elegance of mind, tastes and aims, which it is the specific function of university education to impart. One may grow dexterous, sharp, clever; but he will be an *artisan* only—narrow, illiberal, undeveloped, *subordinate*. The exceptions are too rare to be reckoned on.

It is not, then, so much the danger to the steadiness and tenacity of Mr. Parker's character, resulting from so sudden and great an abandonment of former plans, though always there is danger in that—that I fear. It is the loss of just so many years of the best possible preparation for the part of a *finished man*. It is the sacrifice of an entire life to the convenience of a few introductory months of it. If you ever see him now, I assure you I think you can not better evince the reality of your regard for him than by advising him—if there is need of it, which I have never supposed was the case—rather to borrow money, to teach or to write, for the means of complete academical education—to submit to whatever self-denial—itsself highest of discipline, rather than fail of the full and perfect fruit of this grand means to a true greatness. I know he will thank you for it, while he lives. "*Haec olim (remind him) meminisse juvabit.*"

The little I have seen of him inspires me with interest in his welfare. Your friendship for him and his friends is an additional reason why I could almost venture to give him *direct advice*.

But I have thought it less likely to be regarded as obtrusive, if I said it to you, whose kindness will excuse every thing. I am, most truly, your friend and servant,

RUFUS CHOATE.

The intimation contained in the last paragraph of this letter above, exhibits Mr. Choate's characteristic delicacy of feeling. He hesitated to write to a youth for whom he condescended to feel an interest, upon an important step in life, lest it should seem obtrusive ; but took the trouble to write to a third party a letter *to be shown* to the boy.

The next letter is the first of several which I received from him on his short visit to Europe in 1850. - I make a few characteristic extracts from them.

OFF HALIFAX—Thursday noon.

MY DEAR MR. PARKER :

I greet you from this summer's sea, and give you another and more particular farewell than I had a chance to do before. I hope I shall find you well, and fast and far risen to the noble places of the bar upon my return.

* * * * *

Your sincere friend,

R. CHOATE.

LIVERPOOL, July.

MY DEAR MR. PARKER :

I have just got here, after a very pleasant passage, pleasant in spite of a good deal of sea-sickness.

I spend to-day here, and go to London to-morrow. All England mourns Sir Robert Peel. I had *a letter to him*, and feel a personal sadness.

Liverpool is a larger but *worse* New York—*trade, trade, toujours*—and an immensity of that—and nothing else. It is *English* trade, however—*fair* and *vast*.

* * * * *

Accept my most warm good wishes.

Yours affectionately,

R. CHOATE.

LONDON, July 11 1850.

MY DEAR MR. PARKER :

I have just got here—long enough to admit the general vast vision of London—but with no analysis of its huge rotundity into particulars. Soon I shall subject it to more *successive* examination, after the edge of appetite is a little dulled. You will have heard that Sir J. Wilde is the new Chancellor, that the A. G. (Attorney General) succeeds him, and the Solicitor General Romilly takes his place. These appointments are quite of course, it is said, under the settled practice of administration. In a general way, I must say, the *wig* is fatal to the English lawyer. His head is spoiled ; he is made formal, a mannerist, a technicologist, sad to behold. Give me thus far the Supreme Court at Washington, for grace, dignity, interest, power. But I have seen little, though I have run into several courts.

* * * * *

Accept my good wishes ever more.

I am most truly your friend,

R. CHOATE.

LONDON.

MY DEAR MR. PARKER :

I am off to the Continent to-morrow or Monday, for some three weeks, to anticipate the sickly season, if such there is to be. That over, I shall come again to England, Scotland. I have passed a delicious week here, crowded and fatiguing, but full of every species of interest. I like the Bar better, though I have not seen it at its best ; and have seen enough to discern that, with a grand question, the House of Commons is still the most interesting body of men on earth. Not that I have seen or heard a man in

either House or in Court, to be *named* with Mr. Webster, or Clay, or Calhoun, or a half dozen others. But this body is *the Ruler* of the World ; history and position give it an interest to which no accomplishment or ability of its individual members entitles it.

Thoroughly business-like debating, however, has a great charm anywhere ; and here not one word is sacrificed to grace or exhibition.

Mr. Macaulay struck me as much as any man I ever saw ; affected in manner as I thought, his language is fluent and *recherche*, and his matter rich and redundant like his writing.

But we will talk all this over at home.

* * * * *

Write me that you are well, prosperous and contented.

Most affectionately yours, R. CHOATE.

PARIS, July 24th.

MY DEAR MR. PARKER :

* * * * *

You know all about Paris, or I would testify also to its unmatched interest and beauty, present, visible and traditional. But as I am in full volley of visions just now, and not very well either, I beg you to allow me to say only my good wishes for you.

Your friend, R. CHOATE.

GENEVA, August 9th.

MY DEAR MR. PARKER :

Extremum hunc mihi concede laborem—though that is not the true use of the lines. * * *

I am thinking of home, but first of Italy.

Most affectionately yours,

R. CHOATE.

The following note is thrown in merely to show the style of his off-hand every-day home correspondence.

BOSTON, (1856), Court street.

DEAR MR. PARKER :

I am grieved to say that I am so situated to-morrow that I can not have the pleasure to see you at your house.

If it shall please Providence to give me *rest*, on the same day of the *succeeding* week I shall be yours.

Most truly yours,

R. CHOATE.

Saturday (in haste).

The following note was written by Mr. Choate to the author in consequence of a criticism in a newspaper, which characterized an article by the author in Putnam's Magazine on Rufus Choate's Eloquence, as not doing full justice to him in that regard. The article forms the succeeding chapter of this work ; and the point most objected to appeared to be that Mr. Choate was described as "not a natural orator." The author considered, however, that the general result of the whole description ranked Mr. Choate much higher than a mere *natural* orator ; and placed him among the orators of intellect and high art.

The criticism would not be especially deserving of notice, except as impeaching the author's fidelity in describing his eminent friend—a friend, however, for whom he entertained an admiration which did not lose all discrimination in its ardor.

Upon reading the criticism alluded to, Mr. Choate wrote the following note to the author :

FRIDAY, May 11, '55.

DEAR MR. PARKER :

I had hoped to see you before this and thank you for your Putnam ;

* * * * *

But I have recovered slowly ; have not yet been out but twice, except to the door ; and my nerves are not quite equal *yet* to legible handwriting.

When we meet I will bring up all arrears, and meantime I beg you to be sure that I wholly appreciate *the justice, the friendship, and the independence of your article*. I should have assured you of this long ago, but I have been generally wholly unable to write a legible word.

* * * * *

Accept my best wishes for a happy summer. Most truly your friend,

RUFUS CHOATE.

The two compositions which now follow the above letters, Mr. Choate told me, at the time of their newspaper publication, were written by him. They appeared in the Boston *Daily Courier* as editorial matter. The one upon Mr. Everett was suggested by his oration at Dorchester on Wednesday, the 4th of July, 1855 ; and was published on Friday, the next day but one.

Mr. Choate was then still feeble from his long sickness, but he was upon the platform with the orator. His feelings toward Mr. Everett were especially warm at the moment, in consequence of the kind attention of visits and talk which he had constantly paid him during his confinement. In one of the previous recorded conversations, he refers to this assiduous kindness and his own almost affectionate gratitude.

The article on Mr. Webster was suggested by the sixth occurrence of his birth-day after his decease. It breathes the full fervor of his passionate idolatry of that great man.

It appeared in print on the morning of that anniversary, Monday, the 18th of January, 1858.

MR. EVERETT AT HOME.

A DESCRIPTIVE ARTICLE, WRITTEN

BY RUFUS CHOATE.

The newspapers will have, before this time, placed Mr. Everett's admirable Fourth of July discourse in the hands of the whole public ; but one of his audience may still be permitted to speak of the impression it made on him in the actual delivery. It is little to say that it had brilliant success. Certainly it had. Some five or six thousand persons—but, however, a vast multitude—ladies and gentlemen, children in green chaplets from school, and old age with his staff shaking in both his hands ; of all varieties of culture and of opinion—by silence, by tears, by laughter, by hearty and frequent applause, for more than two hours of not very comfortable weather, confessed the spell of the spoken eloquence of written thoughts and thoughts not written ; and when he ended, sat still fixed to hear, as if the spell would not be broken.

It is saying more to say, that it deserved all its success. The noble, affluent and beautiful genius, and the effective trained and popular talent, all remain at their best. The same playfulness, the same elegance, the same memory of his learning, the same justness and exactness of thought and image, the same discernment of truth, the same fidelity to history and biography, the same philosophic grasp and sweep, the same intense American feeling ; occasionally an ascent to more than his former height of eloquence, pathos and poetry—an impression altogether of more and even truer wealth of mind. One is glad to see such powers and such attainments bearing a charmed life. Long and late be the day when the “old bell” shall announce that the charm is dissolved, and the life on earth is quenched.

The topics and method of the discourse, now that it is printed, we need not dwell on. The treatment of the whole subject, too, can be appreciated by those who did not hear him, only by reading it. What struck us, among other things, was the affectionate and pains-taking fidelity with which the local history and biography of Dorchester were displayed—its periods, growths, acts, and good men in church and state, remembered as if it were a duty of justice and genealogy as well as love—and yet that all these narrower annals were so gracefully connected with, and made to exemplify a history of heroic times and renowned events—"the foundation of a state"—the maxims and arts imperial by which it lives, grows, and works out its ends—the throes and glory of revolution—effected by the shedding of the blood of man, and conducting to a true national life. In this way Dorchester became representative, and, as it were, illustrious—as a handful of minerals may be made to show forth the history of a world, and of cycles.

More than once the speaker rose from the plane of his elegant and clear English, and moving narrative, and just thought, to passages of superlative beauty. Of these were, that which sketched the last man of the Massachusetts tribe of Indians ; that which contrasted the loving, cultivated, auxiliar nature which enfolds us, with that austerer nature which repelled the first settlers ; that which imagined the Titan sleep of the spent wave at Nahant ; that which condensed the long wrongs of the colonial period into the image of a slow "night, swept away by the first sharp volley on Lexington green ;" and, above all, that which conceived the memories and the anticipations that might labor in the "soul of Washington, at that decisive hour, as he stood upon the heights of Dorchester, with the holy

stars for his camp-fire, and the deep-folding shadows of night, looped by the hand of God to the four quarters of the sky, for the curtains of his tent.

And these all, in their places, were appropriate, spontaneous, and helpful. *Nunc erat his locus.*

Shall we confess that there was a certain trait pervading the whole discourse which gave it an interest even beyond its wisdom and eloquence? More than ever before, in our observations of his public efforts, his heart was allowed to flow from his lips. It was as when one of a large and happy household, on a holiday, remembers and recalls to the rest the time when the oldest of them were young—what they used to see, and what they used to hear told—the speaker and the hearer, the while, sometimes smiling and sometimes sad—smiling often with a tear in the eye. Such he seemed, and those who have only seen and heard him on some high theme and day, and when he might appear to be pleading for the Crown of Gold, should have seen and heard him *at home* to know and feel how much he is made to be loved.

Mr. Everett declares himself “retired from public life, without the expectation or the wish to return to it, but the contrary; and that few things would better please him than to find a quiet retreat in his native town, where he may pass the rest of his humble career in the serious studies and tranquil pursuits which befit the decline of life, till the same ‘old bell’ shall announce that the chequered scene is over, and the weary is at rest.” Scholars will recall the pathetic expression of Cicero. *Nunc vero, quoniam, quae putavi esse preclara, expertus sum, quam essent inania, cum omnibus Musis rationem habere cogito.* But this was after his splendid Consulship, and when he had no longer a civil future. Until that has been Mr. Ev-

erett's whole experience, why should he employ his language ?

REFLECTIONS ON
THE BIRTH-DAY OF WEBSTER.

18TH OF JANUARY, 1858, WRITTEN

BY RUFUS CHOATE.

THIS eighteenth day of January is the anniversary of the birth of Daniel Webster. Let it be celebrated as becomes his memory. With composed and slow steps—in imagination, if not in reality—let us walk about his grave ; think pensively and filially and reverentially for some brief space of all which made up that prodigious individuality and identity ;—the majestic frame and brow—the deep, grand tone, stirring or melancholy—the supreme power—the loving kindness,—bid fair peace be to his sable shroud, and so, Hail and Farewell ! And let this thought revive the memory of duties which we once all of us leaped to perform for him, when he was living—when he stood in all things proudly eminent on the high place of his power and his hopes—when the shadow of his name and presence came between others and the glittering and difficult prizes toward which their eyes were straining.

Sometimes he incurred the lot of all the great, and was traduced and misrepresented. Sometimes he was pursued as all central figures in great triumphal processions are pursued—as all glory is pursued—by calumny ; as Demosthenes, the patriot statesman ; as Cicero, the father of his country ; as Grotius, the creator of public law ; as Somers, as Sidney, as Burke, as Grattan, as Hamilton, were traduced. Even when he was newly dead, the tears and praises of his whole country did not completely silence one robed and reverend backbiter. But to-day, who remembers that he was ever approached by calumny ? Who

remembers that they ever questioned the exaltation and breadth of his patriotism—the usefulness of his public life—the wisdom of his spoken and written counsels—the supremacy of his genius—his observance, from the day when he was old enough to know what is virtue to the last grand scene, of the precept, “Let all the ends thou aimst at be thy country’s, thy God’s, and truth’s?” Who is there that feels that any duty of vindication of the dead is left for him? No more than you will feel on the evening of the 22d of February that you are required to clear the awful greatness and white fame of Washington from the charge of the forged letters—the charge of monarchism—the charge of loving England which he defeated, better than America which he saved.

And how every hour—every passing hour—moves all, of all creeds and parties, rather to mourn him and wish him back from his rest to his labors! Who, looking to the Capitol—to Kansas—to Central America, does not feel that he could lay his head more calmly on his pillow at night—that he would raise it in the morning with a more trusting thanksgiving to God, if he might know once more that the old pilot was at his post—so near the helm that when the steersman’s head begins to reel, and the whitened lee-shore to throw its foam in thunder above and over the fore-topmast, he could grasp that helm and hold it with the hand of a master, until the ship should clear the promontory on which no light-house gleams, and rise and fall in safety again on the deep, open sea!

Sometimes it appears to us that the memories of Webster tend to group themselves into a threefold presentment of his career and character. We would say, almost, that there were three Websters—three quite strongly marked and successive periods of degrees and kinds of growth of the

one Webster, in our observation of that achieved and ultimate greatness.

There was first the rising and established lawyer and American advocate ; this was the Mr. Webster of the time from 1817 until he entered the Senate of the United States.

In the second, a period from his entrance into the Senate until he took the Department of State under Harrison in 1841, he had ascended and was walking on the highest places of American public life. And herein it is the statesman ripe, but animated and vigorous—the great orator—the expounder of the Constitution—the leader of the stormy debate, who thunders and who rules—the age of his power—the age of his triumphs.

In the third, the last, the grandest, he assumes the port and wears the habit and enacts the functions of an authoritative, wise, and patriotic counselor of State, verging on what we call old age—the virtuous, venerable and honorable old age, from whose experience the nation may draw, as from an oracle, her maxims of policy—her arts of glory. These were the three Websters of our own personal observation ; the same in all, yet how unlike ; in the first—in the second sometimes—“the sea in a storm ;” in the third, “the sea in a calm.” In all “a great production of nature.”

Of these three aspects of this remarkable greatness, we know not to which we had rather turn. It is as if one, on a Christmas eve, should run over the seasons of the closing year and try to resolve which he loved best, and which he had rather live over ; the stirring life, the first zephyr, the manifold birth of bloom and music, in earth and sky, of spring ; the grander stillness of the summer noontide, the passing off of the tempest charged with thunder, the bow resting in the cloud ; or the fruitful and bland autumn,

the nodding harvest, the harvest-home, the thanksgiving, the serener blue, enlivened with golden light.

Among this series of glories and beauties and joys, we can not choose ; but we may bless God for them all. Happy in all his life ! Happy in what he won—happy in what he failed to win ! Happy in the good he did, the evil he hindered, the example he set—seeds of union and patriotism which his hands scattered !

Go, young men of his country ! bend before his tomb ; mourn there as for a father departed. Feel there how just, eloquent, and mighty is death, and how true it is that God only is great ! But then return, and find in the volumes of thought, and in the great acted life of Webster, the genius, wisdom, and influences over which death has no power.

CHAPTER VII.

RUFUS CHOATE AS AN ORATOR.

THE following description of Mr. Choate's eloquence was originally written for *Putnam's Magazine* in 1855.

It excited some animadversion at the time ; inasmuch as it *discriminated* with regard to the powers of the great advocate, and was not blindly eulogistic.

If the reader, however, will look back to the last letter, in the preceding chapter, he will see what was Mr. Choate's own opinion of the correctness of the description.

The same description was published in 1857 as one of the series of sketches in the author's "Golden Age of American Oratory."

Subsequent observation has only confirmed the opinion there expressed of the peculiar character of Mr. Choate's oratory. I regard it as entitled to take rank in the highest orders of *intellectual* rather than spontaneous oratory.

We wish to consider Mr. Choate, now, solely as an orator, and to allude to any other qualities of mind or body which he may possess, only as they bear upon his oratory. We do not consider Mr. Choate a natural orator,—a *born* orator. We consider him the first and foremost of *made* orators. His mind and his will have formed the elements and talents, which nature gave him, into an orator of the highest mark. Lord Chesterfield, in his letter to his son, continually told him that any man of reasonable abilities might make himself an orator. The son tried *his* best, and broke down hopelessly the very first time he got on his

legs in the House of Commons. While, then, this sweeping proposition is not true in its widest sense, it is undoubtedly true that any man, possessing a certain class of intellectual and bodily gifts, may make himself a very creditable orator. And Mr. Choate is a magnificent example of this truth. For he is one who, by effort and specific mental training, has brought all his intellectual beauty and wealth to the tip of his tongue. But he is a manufacture, not a creation. And yet, just as the fabrics of art are often far more beautiful and useful than the raw work of nature, so he, as he stands before us—the manufacture of the fine arts, is more delightful to hear, and inspiring to look upon, and far higher in the scale of being, than any mere creation of pulse and passion.

A natural orator we think one, whose capital power is in his character and passion ; and in whom these qualities are so plainly and spontaneously developed that he would be successfully eloquent with little art and less learning. These he may add, but he could be very effective without them. In the passion and the character of such men lurks the magic—their amazing will, their triumphal overbearingness, their spontaneous, irresistible self-assertion. Every now and then there comes along some itinerant preacher, or spiritual tinker, or rescued dram-drinker, or other sort of person, who, by the sheer force of his strong, sturdy character, and his equally strong animal passion, not set forth in any dictionary words but in common talk, lifts great audiences to dizzy heights of enthusiasm, and stirs unwonted throbbings in men's hearts. Chatham and Patrick Henry were natural orators of superior order. And Henry Clay was of the same school. He, however, super-added much, but he was a native-born after all. When, in his magnificent moments, men saw him agitate the

Senate into a fury, and then, as one born to command, "ride on the whirlwind and direct the storm," they felt in their inmost soul that he had nature's patent for his oratoric tyranny. When Mirabeau one day screamed into the startled ear of the French Constituent Assembly, the words, "If I shake my terrible locks, all France trembles," he said what required no learning to say, but they were *mighty* words, and they shook the Assembly.

We do not think any great natural orator could be a great lawyer. His temperament must sweep him too fast for the severe and accurate research and application which law demands of her votaries. The orator, too, reasons eminently in the concrete, in pictures and in deductions which are, logically speaking, gymnastic jumps, over which his hearer must go only by the bridge of sympathy, not logic. The disciple of the black-letter abhors the concrete as nature does a vacuum, and revels in the abstract. But the orator of mind can combine both these elements. He can be a great lawyer or logician, and an orator also. Cicero, we have always thought, belonged to this set, and was of course the greatest of his race. Mirabeau had something of both these qualities, and wonderfully displayed them, when, at the end of a set harangue, most logically reasoned and prepared, he saw the stormy house before him still unsubdued. He had taken his seat, but he rose again—he rushed to the tribune, and rolled forth instantly a tide of burning periods, wholly unpremeditated, which went crashing and tearing into the ears of his adversaries like so many hot shot.

This combination of diverse powers is of course indispensable to the truly great advocate, and this Mr. Choate exhibits in the most thorough development of each. His

main power is by no means in native force of character ; nor do we think it lies chiefly in passion. His sensibilities we should judge to have been by nature lively, and his mind, grasping things with great brightness and fullness of detail, and calling into play with corresponding intensity the appropriate accompanying *feelings*, has thus forced them into an overstrained activity, by constantly working them into violent play. But we very much doubt if there was any wild natural outgushing of oratoric feeling, self-created and incapable to be kept in or tamed down. He is a great actor, an artist of the first rate, but an actor after all. We rather think, from the piles of written sheets behind which he rises to address a jury, and which disappear one by one as the speech rolls on, that every word of the eloquent and impassioned argument is all there, cut and dried. To analyze his power, then, we must trace the threads of the intellectual fabric, warp and woof, and imagine it delivered with vehement will to persuade and energetic fervor to hammer it home, but deriving no other aid or appliance whatever from delivery ; hardly anything of the imperial command, the basilisk eye, the untamable spirit rushing forth, mocking and defying opposition ; but we must track the curious working of a grand machine—the intellect ; patient, steady, pressing, storming by turns—sometimes bearing down opposition gradually and piece by piece, and sometimes knocking it in the head. We heard Webster once, in a sentence and a look, crush an hour's argument of the curious workman ; it was most intellectually wire-drawn and hair-splitting, with Grecian sophistry, and a subtlety the Leontine Gorgias might have envied. It was about two car-wheels, which to common eyes looked as like as two eggs ; but Mr. Choate, by a fine line of argument between tweedle-dum

and tweedle-dee, and a discourse on "the fixation of points" so deep and fine as to lose itself in obscurity, showed the jury there was a heaven-wide difference between them. "But," said Mr. Webster, and his great eyes opened wide and black, as he stared at the big twin wheels before him, "Gentlemen of the jury, there they are—look at 'em"; and as he pronounced this answer, in tones of vast volume, the distorted wheels seemed to shrink back again into their original similarity, and the long argument on the "fixation of points" died a natural death. It was an example of the ascendancy of mere *character* over mere *intellectuality*; but so much greater, nevertheless, the intellectuality.

He has not, then, any of those remarkably rare and bold traits of character, conspicuous enough singly, to account for his forensic supremacy. When not actually *in a fight*, he is quiet, facile, accommodating, and bland. You would by no means suspect the volcanic energies lurking beneath, from any appearances on the surface. In his wan and worn and bloodless but benignant face, you would see enough to suspect intellectual treasures stored up, and an *inner* life of strange and unusual topics and movement. He looks as if he moved about in his own mysterious solitude for ever, whether in crowds or all alone; like some stray child of a land bathed in sunset beauty, musing ever on warm Arabian skies, and the burning stars and gorgeous bloom of the hanging gardens of his home. But his mere oratoric *presence* is nothing. And therefore he never impresses an audience, especially a professional one, with a sense of his greatness, till he does something; till he speaks or acts in the legal drama. We see no external symptom of overpowering native character; no symptom of anything which would make you

think that that man, by his grand movement, by his basilisk eye, by his uplifted arm, might strike dumb opposition and palsy hate. And yet we *have* seen him when in battle, *his* battle—that of thoughts and words, standing right over a legal adversary with outstretched arm, with eye burning black with smothered fire, and face white with a deathlike palor, his form erect, his brow more spacious, and the dark curly locks on his temples fluttering about and waving, and uplifting like battle-flags, to flaunt defiance at the foe—and *then* he looked the oratoric war-god.

Why was this? It was because at those moments his *mind*, wherein his power lies, was all kindled and crowded and stretching with thought, and bursting with intellectual passion. It was the burning and beaming *mind* of the man which lit the bold glance in his eye, and lifted and brightened his proud crest. Like all the first class orators, he has in the recesses of his nature the Titan forge and the Cyclopean fires for the manufacture of great effects; but the flames to enkindle them come from his *intellect*, not from his soul. His combustions catch fire from his brain, not from his blood.

It is not so with the born orator. When he rises to speak, his sensibilities, bodily and mental, stimulate his mind, not his mind the sensibilities; his mind does not start his blood, his blood sets his mind going.

We must explore, then, the sources of Mr. Choate's achievement chiefly in his mind. And his intellectual enginery may be all generally summed up and grouped in a few capital heads, thus.

At the basis of all lies undoubtedly a strong, vigorous, masculine understanding. He has at once an observing and an organizing mind; an eye hawklike for the percep-

tion of particulars, and a logical faculty sturdy and severe to generalize and group them. As Mr. Webster said, in his eulogy of Jeremiah Mason, "He grasps his point and holds it." Superficial observers, remarking the luxuriance of his metaphoric style and the poetical abandonment of his passion, would be apt to conclude that the gay structure of his arguments was flimsy ; but let them strike their heads against it and they would see. For in his wildest and most flaming outbreak of even an occasional oration, seeming almost a mere jubilate of conscious enthusiasm, there is a massive well-set framework and firm foundation. That mastery of the law, in its learning and its severest application, with which he daily conquers in the courts, that entire memory and command of the thousand facts and details of a complicated case which every argument evinces, would alone show how firm and solid was the texture of his mind. More than once has a judge of the Supreme Court remarked that that tribunal listened to no man with more respect on naked abstract legal points ; and we ourselves have heard one of the oldest, dryest, keenest, ablest and most fancy-withered lawyers at our bar say that, on the closest question of contingent remainders or executory devises, he would trust Rufus Choate's legal learning and logic as soon as any leader's in the law.

But we are discussing him as an orator, not as a lawyer, and we cite it only as a proof of the *strength* of his mind, which forms a capital element of his oratory. In truth, he has a gladiatorial intellect, in strength as well as combativeness.

Intimately blended with this power, and giving light and vivacity to all its operations, is that regal faculty which in him is beyond all measure splendid—his imagination and fancy ; and this flames ever on the iron chain of

his logic, as the electric spark flashes upon the iron road of its telegraphic course. He *can* present his thought as bald and bare as bleaching bones, but he prefers to give it forth, as it first comes to him, embodied in beauty and robed in splendor. You can hardly ever listen to him ten minutes anywhere without being waked up by some surprising imaginative analogy or fanciful illustration. In court, or with an audience, this warm imagery appears, equally when in an insurance case he apostrophizes "the spirit which leads the philanthropy of two hemispheres to the icy grave of Sir John Franklin," or when in Faneuil Hall he conjures up before the eyes of a wildly applauding political assembly a vision beauteous of "the dark-eyed girls of Mexico wailing to the light guitar. Ah, woe is me, Alhama, for a thousand years !' and by the vividness of his conception and the corresponding intensity of his delivery, causing the people almost to hear with the mortal ear the long lament as of the daughters of Judea over a ruined land—sounds the most melancholy of all that rise from the sorrow-stricken fields of earth.

But reason and fancy would do the orator no good without an emotional and kindling temperament ; a *physical* warmth, as well as a moral and emotional susceptibility. Poets often have the latter, but no physical fire and ardor ; orators often have the former, but no fanciful brightness. He has both. But, as we intimated in the outset, his animal sensibility is subordinate and inferior to his intellectual sensibility. And in him this is as keen as it was in an Ionian Greek. No child of Athens, standing in the shadow of the moonlighted Parthenon, ever felt his nostrils quiver or his heart expand with more genuine intellectual sentimentality, than he is conscious of when at the bidding of his quickening fancy there rises full on the

mirror of his mind the radiant architecture of some great argument.

And in these capital characteristics we have in a large view the leading elements of his oratory ; the solidity of understanding which fixes the tough and close-clamped framework of his creations ; the imagination which clothes and paints them with the roses and the garlands and the Tyrian colors of an inexhaustible fancy, and breathes over them the beauty not born of earth ; and the sensibility which stirs our life-blood like the mountain bugle, or touches the sealed fountain of our tears like a tone from the spirit land.

And hence springs his most remarkable and unparalleled ability to take any part of his subject, whether a theme or evidence given on the witness stand, and force it altogether out of its natural relations, by conceiving it with unnatural intenseness in his own mind, and then, by his mingled imagination and sensibility and wealth of language investing it with a character not its own—rainbow hues or sulphureous fires as he chooses—and commending it thus at will to the benediction or the malediction of men. How often have we seen the opposite counsel in a case utterly puzzled and baffled by the strange way in which Choate seemed to be putting the facts to the jury ; and interrupting him again and again in vain, met and foiled every time by the reply, “ Do I misstate the facts ? I’m only *arguing* upon them.” And the discomforted interrupter would sink back in despair, utterly unable to detect precisely where was the error, yet feeling sure that *he* heard no such evidence. The fact was, Choate had the basis fact all right—he was only painting and inflaming it with his own colors ; but the paints on his palette were to his adversary’s as the sky of Italy to the sky of Sweden ; and they were brought out

on his canvas in even more perplexing and bewildering hue by the impassioned heat of his unbridled sensibility.

Again and again have we seen this imaginative conception, and distorting description, and passionate expression, giving birth to an inspiring contagious and irresistible enthusiasm, carrying him right over weak spots in the argument of the case, as the skater swift as lightning swims in safety the cracking and bending ice. Scarlet, Lord Abinger used to wheedle juries across the weak places, but Choate rarely does that—he prefers to rush them right over.

Brilliantly was this capacity exhibited in the case of Captain Martin, indicted in the United States District Court for casting away his vessel off San Domingo, with the intent to procure the insurance. The government had been at the cost of sending a special agent to Hayti for evidence, and he had brought back with him a black man from Solouque's empire, called by the swelling appellation of "Duke Pino." All the other evidence was manageable, but his testimony was very *ugly*. He swore positively, through an interpreter, that he dived down under water and examined the logwood cargo of the ship and her star-board bow, and in the latter he found a great smooth hole, not rough enough for a rock to have made, and which evidently was the death-wound of the ship. All the other parts of the proof of the government might be got over; some of them indeed were somewhat favorable; but that awful hole threatened to swallow up case, captain, advocate and all. All the rest he managed adroitly and aptly; but when on the second day of his argument to the jury he came to that part, he didn't blink it at all; he "rose right at the wall." He told the jury in set terms, they need not think he was afraid of that dark Duke, butting his black

head among the logwood fathoms deep under water ; and then all at once he opened his whole armament, in such a double broadside of eloquence and fiction and ridicule, that he riddled poor Duke Pino himself into a perfect honeycomb. And then, taking advantage of a felicitous circumstance in the captain's conduct—to wit, that he did not fly when first accused—he concluded with a singularly noble, simple and scriptural burst, which came in like a grand trumpet choral, to crown his lyrical oration : “ Gentlemen of the jury, the accused man paused, he did not fly—for he turned his eyes *upward*, and he was thinking of the sublime promise, ‘ When thou goest through the fire, thou shalt not be burned, and through the deep waters, they shall not overflow thee.’ ” And, saying these words, the great advocate sank into his seat. The jury acquitted the captain, and the expenses of the expedition of the Baronet Pino to America were charged by the government, we presume, to “ profit and loss,” as a pleasure excursion to Boston of the ducal diver.

Indeed, such and so inspiring is his enthusiasm and fancy, that graver minds than juries surrender to its fascinations, and more than once the granite nature of Webster acknowledged its sway. We remember especially on one occasion, sitting behind him on the little seats where the American Bar is represented before the judgment-seat of last resort in America, the Supreme Court of the United States, and hearing him turn to the editor of the *Intelligencer*, who sat next him, with an involuntary exclamation, as some swelling climax of Choate's eloquence pealed upon his ear, “ Isn't that fine ! isn't that beautiful ! ” And again, at a dinner on the next day, we had a singular pride as a fellow-citizen, and an humble admirer of the subject of the laudation, in hearing the same great oracle break

out with a sort of Johnsonian weight of manner, in answer to a somewhat depreciating criticism upon Choate by a noted New York lawyer, "Sir, let me tell you Mr. Choate is a *wonderful* man—he is a *marvel*." Upon his death-bed, he told Mr. Peter Harvey of Boston, that Choate was the most brilliant man in America.

In estimating the parts of the machinery which produces his oratoric fabrics, however, we should hardly have a just view if we confined the consideration to the chief elements only. There are many subordinate instrumentalities evoked, some of them spontaneous, and others the result of great industry specifically applied. The trunk of an elephant is the instrument by which all his powers are chiefly made useful, but the fine prolongation on the end of it, by which he can pick up a needle, is as important as the main body of it, by which he can fell an oak tree.

To the solidity of understanding, the picture-like beauty of imagination, and the ardent, heart-warming glow of sensibility, all of which first catch our eye in his performances, is to be added that which comes to Mr. Choate from an unflagging studiousness, and a scholarly and acquisitive taste ; namely, a wonderful wealth of words, beggaring all description for copiousness, variety, novelty and effect. Literary allusions, sparkling sentences, and words freighted with poetic associations, are so stored in his memory, apparently, that he can dress his thought as he pleases, plain or in gay rhetorical attire, in kitchen garments or in coronation robes. And this vast command of language is of immense importance to him in many ways ; for first it rolls forth in such an unhesitating and unbroken current, that the vehement flow and rush of the speaker's feeling and passion are greatly encouraged and helped by it. A vehement, headlong style of thought must have a wider and

more unencumbered channel for its course than a more placid but less moving stream. "Give me," said the younger Pliny, in his Epistles, "among all the Roman speakers, the copious and the abundant orator—he alone can command me, and bear me as he will." And this is as true now in America as it was then in Rome. Others may sometimes equally delight, but it is the rapid, sweeping, vehement utterance that most of all takes captive. And this command of words, too, enables him to express his *precise* thought, in its minutest shade of meaning. Very few men in the world *can* say exactly what they mean; they can approach it, and go about it and about it, but never hit it; but he, whenever he chooses to be close and precise, can not only reach the target, but hit the "bull's eye" every time he tries.

But more even to the orator than freedom of feeling or precision of expression is the ability, which a copious richness of diction affords, to color, and gild, and lift up his idea or sentiment, by words which are in themselves metaphors and pictures, and which can not be denied to be descriptive of the theme, but yet color and heighten prodigiously its impression on the mind. For the style of expression is not simply the dress of the thought,—it is the embodiment, the *incarnation* of the thought; as the discriminating Frenchman said, "the style is the man," so also it is true that the style is the thought: you can't separate them any more than you can cut asunder the beating of the orator's heart from the sparkle of his eye and the flushing of his cheek. And so complete is this identification, that the common thought married to immortal words, is apotheosized itself. A late critic on Demosthenes has suggested justly, that the reason why the prince of orators seems tame to us, as we read him, is, that we can not take

in fully and feel the full association and metaphoric image which each word conveyed to every Athenian whose ears tingled as he stood in the agora before him. To do that would demand an Athenian life and conversation.

Warriors on the eve of the fight have spoken to the soldiery in words which have been in truth half-battles, and always for the orator the winged words of rhetoric will go far to win the day. The extraordinary affluence of diction which Mr. Choate possesses is drawn from all the sources of literature and men's talk, common and uncommon ; from the Bible and the newspapers, from some Homeric stanza, and from the chat of our streets ; from books, the people love, and books they never heard of ; simple words, long-legged words, all mixed up and stuck together like a bizarre mosaic, showing forth some splendid story, in all its infinite variety of hues.

Although oratory is one of the fine arts, and the province of a fine art is to yield pleasure as *an end*, yet it is also a useful art, and therefore the beauty and vigor of language is only admirable in the orator when it conduces to the deeper and more intense impression of the thought upon the mind ; and judged by this standard, without reference to any arbitrary canons of taste, we think Mr. Choate's *word-ammunition* is a most legitimate, and useful, and telling charge for his oratoric artillery.

They are not at all *fine* words exclusively ; there is nothing of kid-glove dilettantism in his vocabulary ; he is not, like some speakers who scorn to deliver themselves in any but a sort of rose-colored rhetoric—afraid to take right hold of the huge paw of the Democracy by language coarse, and homely, and inelegant, but full of strength, and grit, and sense. Indeed, often you will see and hear in his jury appeals a classic gem of thought of rarest ray, set side by side

with phrases smacking strongly of the very slang of the streets. But the talk of the day, though it may not excite men's wonder, comes home to their bosoms and busines; and through its road often the highest eloquence may move, as two thousand years ago the sage Socrates talked in the street before the Pnyx in Athens, to the common people who passed by; illustrating by the commonest examples the profoundest philosophy.

And in all Mr. Choate's language, whether common or uncommon, there is point, object, and meaning. No man can call his wild flights of metaphor an imagery—forcible—feeble, or rank his composition as belonging to the “spread eagle” school; for in his wildest and most far-fetched excursion for analogies, his flight soars from such a massive ground-work, that though the adversary smile, he must also *shake*; just as the gala decorations of the heavy sides of a three-decker mantel in bright bunting her grim batteries; but through flowers and through ribbons we see all the time those terrible death-dealing, powder-stained muzzles still there.

There is never any calmness or simplicity in his general composition. It is marked throughout by a character of apparently rather morbid mental exaggeration. We never see him, like the statesman, simply proposing and grandly inveighing or insisting; but always, like the orator-advocate, idealizing every thing, and forcing it out of all its natural and just relations. His disposition produces some extraordinary neighborhoods among thoughts. Things that never before dared to lift their audacious heads higher than the sand, he sets at once side by side with the stars; and if, notwithstanding his interfusing art, they seem as uncomfortable and ill-matched as some marriage unions of more corporeal creations, he breathes over them one

burst of eloquent passion, and they settle down cosily together.

Over all his work a serio-comic cast is perceptible. His analogies and figures are sometimes designed to produce mirth, and then he always "brings down the house;" but even when not designed, there is often such a funny little vein of thought, dashed into some solemn and high-keyed conception, like a woof of woolen shot with silver or the black marble of Egypt veined with the yellow gold, that it provokes a quiet smile, as if some stage tragedy-king should crack a joke, or the sepulchral Hamlet should give one rib-shaking laugh. In a marine criminal case he had been making a lofty flourish, ushering in upon the stage of his thoughts like the motley cavalcades of a circus in one grand *entrée*, Captain Parry and the English crown, eternal snows and the royal enterprise of a new empire, and Heaven knows what else! in the most singular but striking juxtaposition, his whole manner dignified, fervent, and lofty in the extreme,—when suddenly he gave the oddest, wildest counter-stroke of sentiment we ever heard, even from him, by turning to a leading witness who had testified against him, and who had said in cross-examination that he got some of his opinions from the policemen of the whaling city of New Bedford,—turning right to him, he brought down roars of laughter on his devoted head, and utterly demolished the weight of his evidence by shouting out the sarcastic and funny inquiry: "Pray, what opinions do the policemen of New Bedford hold on these things? I wonder what the policemen of New Bedford think of the great, newly-discovered, tranquil sea, encircling the North Pole!"

But, while his eloquence of composition can not be called distinctively self-assured and statesmanlike, it is yet

elevated and inspiring, from its appeals to the whole range of the grander and larger virtues; to magnanimity and loftiness of soul. Often he will draw some heart-comforting scene, which opens to us the paradise of youthful dreams where every noble and gallant virtue combines to set its seal, for the sole purpose, apparently, of raising the hearer's mind to the level of the appeal he is about to make to him in the name of virtue and honor itself. "I appeal to the manliness of a Boston jury," he often exclaims, and rarely in vain; "I appeal to the manhood of a Massachusetts judge," he sometimes exclaims, with not universally the same propitious result.

The whole movement and play of his mind in oratory seems large and free; and the broadest generalizations of abstract truth fall from his lips; maxims of the widest application, truths eternal and infinite,—maxims and aphorisms which Edmund Burke might have uttered in his hour of most philosophical frenzy. From these universal principles and the higher order of intellectual considerations, the nobilities of mind, he will always reason whenever the subject tolerates such treatment. But though his style of rhetoric is as opulent in thought as it is oriental in diction, it does not seem so rich in thought and observation as it really is, from the very splendor of the words,—it has wisdom without parade; the parade is wholly in the *dress* of the ideas.

But, after all, we feel that the most general traits of his oratoric compositions are to be summed up and set down as an indescribable mixture of truth and reason, extravagance and intensity, beauty and pathos. Nothing is too wild, or far-fetched, or intense for him to utter in his oratorical raptures. Similes and arguments, for which another man would almost be hooted out of court, he can

say with profound gravity and prodigious effect. And herein, as much as anywhere, he reveals his real, essential power; for the force of his will and his intellectual passion is such, that he compels us in spite of ourselves to admire and sympathize with what in another man's mouth we might entirely condemn; for when he seems utterly carried away himself by the rush and storm and glitter of passions and of pictures sweeping over his mind, we go with him in spite of ourselves; then, no matter how trivial the subject or how humble the place, he abandons himself wholly to the mood, and so wonderful is his power of compelling sympathy, that he will at once lift that lowly theme into aerial proportions, cover it all over with the banners of beauty, and for a moment seem to make it fit for the contemplation of a universe,—and few will laugh, and all will wonder, and many tremble with delight. Once, in a cheap case, in a criminal court, when he wished to tell the jury that the circumstance that the defendant's assignee in insolvency paid but a small dividend, although the defendant had been a very wealthy man, was no evidence of fraud on his part (because an estate turned suddenly into cash, by an assignee indifferent to the interest of the owner, would waste and net nothing like its value), he contrived to liken the property melting away under that assignee's management, to the scattering of a magnificent mirage under the noon-day heat; and rising higher and higher in his mood, as he saw the twelve pair of eyes before him stretching wide, we well remember with what loud and pealing accents he swept in glory through the climax of his imagery and his argument, by this astonishing comparison of the dry-goods man's bankruptcy: "So have I heard that the vast possessions of Alexander the conqueror

crumbled away in dying dynasties, in the unequal hands of his weak heirs."

And again, there are passages scattered all through his productions, of the most genuine and simple poetry and pathos ; as unforced and natural as the lines of the marvelous child, who "wrote in numbers, for the numbers came ;" and blended with them there are other passages of fiery but pure poetry, conceptions which may challenge comparison with the most emphatic of even the flaming cantos distilled from the darkest midnight and the best gin by the fevered brain of Byron. All the poetry there is in anything, his genius will detect and grasp as surely as the divining-rod points to the golden stratum beneath the soil ; for in the education of his faculties he has been always loyal to the Muses, as well as faithful to the austere claims of his acknowledged sovereign, the sage Themis ; and he may well be called the poet laureate of oratory. Nothing is too far off from fancy for him to detect its remote imaginative connections of thought ; Cowper's Task poem on a Sofa is nothing to one of Choate's *Task arguments* on a musty old deed. Indeed, we believe he'd have poetry out of a broom-stick, if necessary.

Like De Quincey, he idealizes every thing, throwing over common things that dreamy sentimentality which shows that they are the utterances of a mind full of associations unknown to any but the children of genius ; raising thus the ordinary occurrence, the mere casuality, into the importance of an epic or the tragic grandeur of a fatality. And oftentimes the poetry and the passion mellow and blend in chaste beauty, and the pathos goes straight to the heart, tender and touching and tearful ; and then as he soars upward again on some sublime spirituality of sentiment, or lets his fancy riot in the full flood of rapt

imaginings, the oratorical argument grows lyrical in its poetical colorings, over it a mystical and weird-like tinge is thrown, and the orator stands before us, like an Italian improvisatore, or the Homeric rhapsodist, telling the tale of "Troy divine" in the streets of the Athenian homes.

The peroration of one of his arguments, as we now recall it from memory, after an interval of some years, was an affecting illustration of the tender and beautiful traits of his speaking. It was an argument to a single judge, sitting without a jury, to hear a libel for divorce. Daniel Webster was on the other side, and he supported the husband's petition for a divorce, on the ground of the alleged wrong of the wife. Choate defended the wife, on the ground that the principal witness in the case was not to be believed, and that the wife was falsely accused by the husband, who perhaps was impatient of the matrimonial chain. He wound up a close and clamorous attack upon the witness, who swore to certain improprieties of a young man with the lady, his client, by the vehement declaration that if this were true, "that young man is the *Alcibiades* of America ;" this he uttered with impassioned energy, "fire in his eye and fury on his tongue ;" and then he made a full stop ; he looked into the stern, grand face of Webster ; he looked at the scowling husband and the tearful wife ; he looked at the solemn judge ; his eyes seemed to moisten with his thought ; and presently a grave, calm, and plaintive tone broke the deep stillness : "Whom God hath joined together, let no *man* put asunder. I beseech your Honor, put not away this woman from her wedded husband to whom she has been ever true, but keep them still together, and ere long some of the dispensations of life, some death-bed repentance of a false witness, giving up her falsehood with her dying breath, some sickness, some ca-

lamity touching this husband's own heart, shall *medicine* his diseased mind, and give *her* back to happiness and love." The subduing gentleness and plaintive beauty of this appeal to the stern image of Justice, aptly personified in the single judge, sitting silent before him, was made more marked by the bold, strong way in which Webster, who instantly rose to reply, began his argument. For, conscious, apparently, of the strong sympathy which Choate had raised, he launched a heavy blow at this feeling at the outset. He opened by a very powerful, but unpolished and inharmonious comparison of the husband's fate, if not divorced, to the punishment recorded in history of a dead and decaying body lashed for ever to the living and breathing form of the condemned criminal. The impassioned prayer of the wife's advocate, however, was destined to prevail.

The rhythm of his composition we do not think is very noticeable. There is a marked rhythm in his delivery, and of that we shall speak when we discuss his manner; but let any one, unacquainted with his ordinary way of speaking, read aloud a speech of his, and he will perceive the want of any musical quality, such as constitutes the rhythm of prose; a rhythm not like that of poetry, uniform and monotonous, but ever-changing, and rising and falling like the wild music of the wind-harps of the leafless trees in autumn, or the sobbing and shouting of the seas.

His oratoric style, we think, shows for itself, that it is very much pre-written. And, indeed, the piles of paper behind which he rises to address a jury, and which disappear as he goes on, can not all be the notes of evidence in the case; and the nice and close articulation of the members of his sentences, with the precise placing of words,—words not measured, but *fitted*, to their places—make it certain that he subscribes to Lord Brougham's theory, that

vagueness and looseness and weakness of matter can only be prevented by the speaker's careful, previous-written composition. It is true that Choate often seems diffuse and wordy, but the diffuseness is an exuberance of illustrative idea, and words with different shades of meaning, or additions of ornament, not mere roundabout paraphrases to get at his idea the best way he can ; he strikes out his idea as sharp and clear as the head on a gold dollar, or a medallion of Louis Napoleon ; but, like that, it is embossed in relief, and laureled with imagery. And, on the whole, the *matter* of *his* speeches, so successful and striking, presents a splendid and encouraging example of the union of general, liberal, and polite culture, with the close and austere elements of firmness and solidity, which only hard work can give,—hard work among books and hard work among men.

Brougham's productions, some of them at least, have been called, "law-papers on fire ;" and in reading one of Choate's speeches, we catch the movement and velocity of a most fiery mind, evidently working with an Arab-like rapidity, and running faster and faster in its course, as it mounts its climax of thought ; rapid, close, short, hard-hitting questions, alternating with the pictures of fancy and the breathings of passion ; and, as in the midst of the ornament and the rapture, the iron links of the argument roll out and wind closer and closer, and the groundwork once established, is gone over with confirming and victorious emphasis again and again ; the ideas crowd thick and strong on the mind, the sentences grow fuller of meaning, and the vigor and solidity of the whole fabric is, as if the lion's marrow of strength were poured into the dry bones of the skeleton argument.

And now, having thus slightly analyzed Mr. Choate's

intellectual enginery, by which he works for his results, let us give a glance at him, as he speaks, and in full action. There are many orators who rely almost exclusively on their "action;" that is, their whole delivery, tones, gestures, manner, every thing; while others rely mainly on their exhibitivè and enforcing power of rhetoric; and certainly the modern pulpit reckons its brightest stars among those whose style of matter is a regular fancy arabesque. But the transcendent legitimate climax of oratoric power will never be attained by any mere excellence of *matter*; it is in *manner*, in the *man*. That terrible outburst of power, that incomprehensible δεινοτης, so awful, so irresistible, with which the prince of orators, in the most celebrated speech yet spoken upon earth, tore "the crown" from the unwilling hand of Æschines and set it for ever on his own forehead, was no grace of *matter*, but a tremendous, agonistic style of passion and of energy in the *manner*, the delivery, the man.

Now, in their manner, some men of note are almost exclusively energetic and forcible; they speak with nerves strung, with muscles braced, and the whole frame erect and energized. But, usually, these are unmelodious and somewhat harsh in speaking, though effective. Lord Brougham is such a speaker, and many others whom we could name, not quite so far off. Others, again, are chiefly pathetic, and graceful, and harmonious speakers, speaking in rather a conversational way, and with a grateful cadence. Kossuth is, we think, to be thus considered, and also our own Wendell Phillips. Either of these men can speak two or three hours to an audience, without wearying them; and if fully aroused, they would make one feel that it was worth walking a good many miles to hear them; but the declaimers of the merely energetic

school split men's ears, and tire them out in three quarters of an hour. But the subject of this sketch seems to us to possess many of the capital excellences of both these classes. In his oratory there is a vehemence and a rapidity of utterance perfectly overpowering, and yet a musical flow and tone, a modulation and cadence, a pathos and sweetness of inflection, which gives him the power to storm our souls without stunning our ears. There is nothing (in his delivery) like the drum-beat rolls of Father Gavazzi's intonations, pointing with fury to the red cross upon his breast, and launching the thunder of his passion at the head of Rome ; nothing of the hill-side stormings of Daniel O'Connell before his monster meetings, denouncing England ; but there is tremendous vehemence, nevertheless, which makes itself felt chiefly in the rapid rate of his utterance, and in the emphatic stress of the important word in his sentences ; while all the rest, the less important words and the cadences by which, as it were, he dismounts and comes down from his lofty heights of shouting emphasis, run along rich, soft, and low, sinking, if any thing, even too far down toward the inaudible. Frequently he produces a very bold effect, by a fierce head-shattering emphasis, and then dropping right down instantly to the simplest colloquialism.

He does not, however, speak in the conversational way. It used to be said of Harrison Gray Otis, that when you met him in State street, and heard him talk about property, you heard the orator Otis almost as much as if he were in Faneuil Hall, talking about politics. But nobody could imagine, from talking with Rufus Choate, that they had heard the orator Choate. His delivery is the most rapid and sustained and emphatic which we have ever heard, except from the great temperance advocate, Gough ; while it has a musical flow and rhythm and cadence, more

like a long and rising and swelling song, than a *talk*, or an argument. Indeed, his rhythm is so marked, that on first hearing him it seems a little like sing-song, but this impression soon wears off, and gives way to a pleasing sensation of relief, which otherwise his vehemence might prevent. Not possessing that liquid melody of tone, which in the common accent of agreeable conversation seizes and fills the ear; not speaking, indeed, in any degree in the conversational key, which, when well done, will by its variety of inflection, by its ever-changing rhythm and naturalness, hold the hearer enchained for a long time; he relies on this extremely nimble and feverish style of utterance, to seize the hearer's mind, and keep him running along with him at a top-speed, till either he chooses to let go, or the auditor, entirely exhausted though not disenchanted, drops off himself. This style is fatiguing to listen to in a speaker, although fascinating when habit or genius makes it natural; because one's nerves and faculties get strung and driven on to such a degree from involuntary sympathy with the speaker, that the hearer is almost equally exhausted when the peroration comes as the performer himself.

Henry Clay, in a great speech, would move on through the oratoric voyage, as gracefully as a great ship, whose snowy plumage ruffles and shivers in various breezes, stormy and placid by turns, but whose movement is always majestic, serene, and swanlike o'er the sea; but Choate is a steam-propeller, on the high-pressure principle—rushing and spattering and foaming and tearing ahead at a dead rate all the way. His melody is one steady tune all the time; its modulations and intonations diversified and distinct, but all servient to one dominant principle of melody, whose general character is permanently stamped on all he utters; even like “the

multitudinous laughter" of the waves, mingling with crashing breakers and sobbing billows, but all subordinate to, and finally lost in, the one great ocean diapason—the grand, majestic music of the sea. Somewhat in the same way, at least as far as regards unbroken velocity, William Pinkney spoke—the most brilliant legal speaker, before Choate, in this country, to whom Benton, in his "Thirty Years in the Senate," attributes the greatest contemporary repute of eloquence in America. In the first moments of his speech he did not win, but rather repulsed you ; but gathering headway, he gained more and more upon you, till soon he took the helm of your mind and led you hither and thither as the frenzy and the mood swept over him. And precisely the same thing we have heard said of Mr. Choate, by a great and experienced authority ; for the eminent critic declared that he listened to Choate's Webster speech in Faneuil Hall, at first with dislike and then with indifference, but soon with delight ; till presently the orator got full command of him, and for the moment swept him wherever he would.

Although this railroad rapidity of movement in his elocution conduces thus to his general effect, and as a whole, perhaps, gets fuller command of an audience, yet it certainly very much weakens the effect of particular passages. We have heard the most affecting and illustrative periods rattled off by him so as to call no particular attention to them ; a mere dropping fire of distant musketry, when they should have been delivered with all the deliberateness, precision, and emphasis of minute-guns. Grattan tells us he heard Lord Chatham speak in the House of Lords ; and it was just like talking to one man by the button-hole, except when he lifted himself in enthusiasm, and then the effect of the outbreak was immense. But Choate is *off* from the

word "Go !" and is all along on the high ropes, and bounding up like a full-blooded racer all the time ; consequently, the effect of all the higher passages is damaged, the whole is so high ; we can not have mountains unless we have valleys.

He throws the same fiery enthusiasm into every thing—a great case or a little one—a great speech or a common occasion. The client who retains this great advocate may always be assured that he gets the whole of him ; blood, brains, every thing—his inspiration and his perspiration—all are fully given to *him*. And in managing his oratoric artillery he shows great tact and skill, for his reputation as a master of eloquent whirlwinds is such, and a jury are so often cautioned on this account by the opposing counsel to keep a sharp lookout for him, that it is often necessary to approach his hearer's mind with unpretending simplicity, to dissipate his fears a little and get him under way gently, before he can be whirled into the vortex. We once heard a lawyer who had often heard Choate speak, declare that the finest exhibition of eloquence he ever heard from him was in a little country office, before a judge of probate, upon the proving of a will. It was a winter morning, and the judge sat before the fire with his feet up in the most careless manner. He evidently had a great contempt for oratory as applied to law, and was quite resolved to have none of it ; so turning up his head as he saw the counsel for the heir looking at a pile of notes, he said, in the most indifferent way, "If you've any objections to make, Mr. Choate, just *state* them now." (The idea of asking Rufus Choate to "just state" any thing !) Choate began in the most tame manner he could assume, by running over a few dry legal saws and some musty and absurd principles of law, governing wills. The old judge began to prick up his

ears ; soon the argument advanced from a mere legal principle to a trifling but telling illustration of it, couched, however, as far as possible, in legal phraseology ; the judge gave more attention, and the advocate enforced the illustration by a very energetic argument, but not yet flowery ; and speedily the judge's legs came down one after the other, his body turned round, and his eyes were fixed on the speaker ; and at last, as he rose into his congenial and unfettered field of argument, and pictured with flaming passion the consequences to the whole domestic and social state of New England, if the construction for which he contended should not be applied to the wills of the farmers of New England, the judge fairly nodded in admiring acquiescence, and the unequalled advocate carried the case and the tribunal at the point of the bayonet.

The vanquished judge was only in the same predicament with many an obdurate jury. Throughout the whole of a jury argument, you see the resolute, unflagging *will* working on the twelve men. When he woos and persuades, or when, with more determination, he seems to say, "*you shall* believe it," at all times alike, by look, by expression of face, by every thing, he seems to say first—" *do* believe it, but if you won't, you *shall* believe it." We saw him once walk right up to a juror who sat on the front seat of the jury-box, looking doggedly incredulous—right up close to him he walked, and bringing down his clenched fist almost in his very eyes, "Sir," said he, "give me your attention, and I pledge myself to make this point *wholly* clear to you." The poor man looked more crest-fallen and criminal than the accused prisoner ; he opened his eyes and his ears too ; one after another the fortifications in which he had intrenched his resolution for "a verdict against Choate," went slambang by the board under the resistless forensic

cannonading, and a verdict for defendant sealed the success of that daring declamation.

He rarely, however, uses invective or the fiercer and more grand styles of controversy ; but through all he rather coaxes and leads and lulls, occasionally only astonishing and compelling assent by thundering bravuras of oratory. A tender and melancholy strain pervades his utterances, like the air of a song whose thoughts we take in with our mind, but whose feeling floats into our hearts on the gentle music which accompanies the words, running through melodious variations to a loving and sorrowing cadence. And often when his glances and tones show him to be "in a fine frenzy rolling," suddenly, as if some soft south wind of association and emotion stole over him, he will sink on to the soft pedal of his vocal instrument, and a little episode of delicate and sad fancies will shoot into the coarse web of his argument, dropping as gently from his lips as dew upon the flowers. No matter how vehemently he lifts his voice, no matter if in the frenzy of passion he breaks out in some mad and almost bedlamitish shout, he will speedily sink into the lap of a cadence mournfully beautiful, falling upon the half-shocked ear as west winds on the half crushed rose buds. In the speech to which we have before referred, where he pictured the mourning of Mexico, in the funeral songs of her dark daughters, chanting, "Ah, woe is me, Alhama, for a thousand years !" the accents rung and moaned through that old Faneuil Hall, like the lamenting wail of a banished harpist, sweeping the chords of his country's memory. So universal and so mournful is the pathetic element of his delivery that it would require no very wild flight of romance to fancy Calliope herself, the Muse of Eloquence, mingling for ever with the tones of

her most favored child her own laments for her "lost art" of perfect oratory.

Mr. Choate's "action," as far as bodily gesture and presence are concerned, does not materially aid his eloquence. Some orators' pantomime is the perfect painting of their thoughts; in the prophetic expression glancing o'er their face like the shadows on a summer's sea; in the discriminating gesture, each one telling its own story with perfect honesty; in the bodily bendings, appealing or enforcing, the whole story is told. As the man said who was somewhat deaf, and could not get near to Clay in one of his finest efforts, "I didn't hear a word he said, but, great Jehovah! didn't he make the motions!" But in Choate, the deaf man looking at him would see a gesture comparatively uniform, and chiefly expressive only of degrees of energy, and a countenance mainly indicative of only more or less intensity of nervous passion. His countenance is by no means the looking glass of his soul. It is too sallow and bilious; the deepest shadows alone are visible on its dark disk.

He has, however, one extraordinary instrument of gesture, rarely, if ever used before, and that is *his legs*. For it is a frequent resort of his, by way of *emphasis*, to spring up, by bracing all his muscles, and settle himself down again on his *heels*, with a force which often actually shakes the whole court room.

His voice is rich and deep, not resonant and metallic—a quality which all out-of-door speakers must have—but rather woody and deficient in "timbre." In dress, he looks as if his clothes had been flung at his body and stuck there. His cravat is a type of his whole costume; that was once well said "to meet in an indescribable tie, which seems like a fortuitous concurrence of original atoms."

With many orators, the spring of the neck from the shoulders gives a great characteristic effect of manner to the throwing out of their words. Webster's massive neck, springing from his shoulders like the solid oak, enforced every emphasis. Chatham's lofty look was greatly due to the set of his head ; and of Rachel, the *tragedienne*, it is said that a certain harmonious distance between her well-formed ear and her shoulders lends great effect to her correct gesticulation and her dignified attitudes. But Choate has hardly any elements of figure or person peculiarly favorable to oratory, except his eyes ; they send forth lightnings, and sparkle and burn like a fire-eyed worshiper of the East. It is rather in spite of his physique, in spite of nature and his stars, as Pinkney said of Fox, that he is a first-class orator.

And we think, with profound deference to so great an authority, that he rather makes a mistake in neglecting action, and relying too exclusively on mere vehemence and weight of ear-filling words and ear-catching thoughts ; for, after all, for the mass of mankind, *action*, not composition, is the thing—oratory, not rhetoric. The brilliant uniforms of the sunshine soldiery will do for a dress-parade, but they are in the way in battle ; for business, for profit, for victory, we want the old gray coats, and no wadding but the solid bone and muscle in them. And if Demosthenes were to rise from his ashes in the urn to-day, he could never say a better thing than he did when thrice he answered the thrice-asked question, What is the essence of oratory ? “ Action, action, action ! ” By action, he meant no mere school of gesture, but every bodily element of expression of thought—the vocality, the passion, the whole movement.

But we must finish our picture, feeling, after all, great disappointment that we can give no better idea of this

strange and incomprehensible orator. He can not be daguerreotyped, he can only be hinted at ; and as we have heard a painter say of a provokingly elusive face, you must make a *memorandum* of the countenance, and let fancy do the rest. The faint idea which a literally exact speech reported would give can not be had, for no reporter can follow him ; and after a speech he can not tell what he said. There are his copious notes, to be sure, at your service, which *he* can't read, and the man has yet to be born of woman who can.

There have been moments when, in speaking for the life of a man, he rose above himself, his head grew classic and commanding, his form towered up into heroic impressiveness, and then, indeed, he grasped the thunderbolt ; for then it was given him faintly to shadow forth that consummate eloquence, the dream and the ideal of antiquity ; the unapproached combination of logic and learning, and poetry and passion, and music and action, all in one flashing cloud, rolling electric over men—the most imposing form of power which God has ever given into the hands of men.

Other jury advocates may surpass him in single points ; but take him for all and all, we think he brings more varied and higher qualities, more intellectual weight of metal to the Bar, than any man of our time who has made legal advocacy the almost exclusive theater of his energies and his fame. Erskine may have had more simple grace of diction, and a more quiet and natural passion ; Curran may have had an equally impassionate but more unstudied rush of fervor, in his Celtic raptures ; Ogden Hoffman may be more naturally melodious in his rhythm, suggesting more vividly the fable of him who had a nest of singing birds in his throat ; and possibly Pinkney may have had a harder

legal head, for laying the foundations of his legal rhetoric; but when we consider that he adds to so many forensic arts such wide-varying intellectual accomplishment—almost satisfying Cicero's magnificent myth of him who should make himself the most illustrious of orators, by first being the foremost man in every branch of learning which men could talk about—then we unhesitatingly rank him the first orator, as well as most formidable advocate, who now, in any quarter of the globe where the English language is spoken, is ever seen standing before the jury panel.

CHAPTER VIII.

FORENSIC ARGUMENTS.

MR. CHOATE'S arguments before the Jury and to the Judges in banc, as also before Legislative committees, Referees, etc., are, so far as they have been preserved, the supreme monuments of his genius. Unfortunately, however, comparatively few of them have ever been preserved. In his later years, stenography had so far advanced as an art, that it became possible to report him; but before that, no reporter could keep pace with the fiery velocity of his thought and utterance.

Many of the following arguments, and passages from arguments of his, were written down at the time of their delivery, by myself, or some other member of the Bar, who sat by in the court room; I doubt if they were preserved or exist in any other form. A few of them are from stenographic reports.

Mr. Choate's popular and political speeches were generally fully reported, and often, revised by him. It is expected that they will appear in appropriate Volumes, published for his family.

But his Jury appeals are mostly preserved only in loose MS., and can be found nowhere else than here. Those I took down myself and those which others thus took down, I give here, that they may stand some chance of preservation in the tangible and permanent shape of print.

THE EASTMAN AND FONDEY CASE.

The first case of his of which I have any recollection, was one where a firm, Messrs. Eastman & Fondey, were indicted for *fraud*, in their mercantile transactions. They alleged themselves wholly insolvent.

The case was tried in the Municipal Court in Suffolk, at the September term, 1845, Judge Cushing presiding.

After the government had put in their case, Mr. Choate opened for the defendants. The following sentences from his address were taken down at the moment :

Shall it ever be said that two merchants whose integrity up to the day of their arrest was not even suspected, whose honor up to the last falling sands of this hour has not been stained by the first breath of evidence adduced by the prosecuting officer, whose transcendent power in ferreting out evidence and whose untiring vigilance leaves no stone unturned : shall it be said that such men are in danger, or that harm can disturb a hair of their head, when, showing a clear breast, they place all of life that is worth living for, in the hands and at the disposal of a jury of Suffolk ? No, not a word ! not one word ! not a word ! Justice will be meted out considerately, wisely, justly ; and men in every station will be entitled to the benefit of that benign and felicitous provision which we are all pleased to recognize and apply to the stranger, alien, brother, friend or foe—the *presumption of the law* that the defendant is innocent. It stands beside my client throughout this day's trial like a guardian angel, and cheers him mid the peril of this hour. I would cease this speech right here if I deemed it necessary or proper, and challenge my brother to put his finger on one scintilla of evidence pointing to the grave charge in his manifesto. *Fraud, fraud*, my brother says. Where is it ?

Where? Fraud, gentlemen, is a harsh word; but let us find it first. The cry of wolf when there is no wolf, mad dog, and a thousand other things, may set the police astir; but who shall protect the stricken deer whom the herd hath left far behind?

Have we not all felt, and did we not all share the shock which the great storm of insolvency gave to the commercial world? The strongest trembled like reeds in the blast; but did we cry *fraud*, as if all men had been by magic made villains? Is unsuccess criminal? If so the mariner, merchant, poet, philosopher, mechanic, *aye, the apple woman at the corner of the street*, all are criminals, for all have failed to succeed. Their boldest conceptions, purest dreams, fairest hopes, have not resulted in the *real*; still we would not be eager, from kindness of heart, to accuse, denounce, or brand their deeds, by cruel speech, as a bald fraud. It may have been *a brilliant failure*, but *a bald fraud—never, never*.

Few lessons of experience are sweet. Life hath its bubbles as the ocean hath; circumstances hurry us madly along, whither we know not, nor for what haven. Many a merchant has retired full of hope, and risen to look upon a wreck of his fortune. What says the police officer, the alderman with good capon lined? Fraud—a thousand frauds, phoenix-like, leap up to feast the depraved ear, cultured to foul reports, dealt out by busy-tongued slander.

Defeat and unsuccess may be honorable, if honesty guide the victim; and success may stain the good name of the best of us all if attained by criminal means; then, gentlemen, go with me to the evidence; and if you see *fraud*, it will be your duty to convict; if not, your pleasure and duty to acquit.

When Mr. Choate had concluded his opening to the

jury, he proceeded to put in his case, and his witnesses were called. After his evidence was all in, he addressed the jury, closing for his client. The following are extracts taken down from his lips :

Gentlemen of the jury, I have no anxiety in submitting the cause of my clients to your unbiassed deliberation, for I too well know the candor and unbending integrity of a jury of Suffolk, to feel any hesitancy or reluctance in placing all that is dear and worth living for in their hands and at their disposal. I need not enforce the importance of a good name in a mercantile community like ours. I should censure myself if I should indulge in any illustration or much speech upon a theme familiar to you as the primer of your boyhood.

Speaking of their Arrest.—They had returned to their homes, to inhale a breath from the atmosphere freed from the noise and din of busy life, cares hanging like a portentous cloud over their hearts ; their fortunes had taken unto themselves wings, and were scattered like forest leaves chased by the winds ; they were found by Mr. King in tears. Yes, gentlemen, on that fatal Friday night, *hope* went out in their bosoms like a farthing candle at daylight ; and they were dragged by the sheriff to wear away the watches of the night in a felon's cell.

Speaking of Mr. Fondey's Honesty.—Do we not tear our hearts from our bosoms, and wear them on our sleeves, that you may see that their pulsations are honest and their beatings true ?

Without temporary loss of character, often when a soldier is run through with the bayonet, and sunk down mid the dead and dying, God in his mercy raises him up and

crowns him with the laurels of fame, and rests upon it the mantle of honor.

The law, as it were, plucks the arrow from the stricken deer which the common herd hath left far behind.

Creditors open the Desk of Eastman & Co.—Their desk was broken open, and their papers read, which were as sacred to them as the letters of their courtship.

Speaking of the Firm's paying Usury, which the Government argued was strong evidence of their intention to defraud.—Is it possible to think rationally, that if a person was going to plunge into a cataract below the precipice, he would be over careful not to moisten his feet with dew? It is *sheer nonsense*—senseless talk; not a schoolboy in Massachusetts would waste a breath over such twaddle. It was no rashness like a sailor resorting to the spirit room, to intoxicate his system that he might go down with the ship without a groan, without a bubble. But an effort by strong men to escape the great storm of insolvency which had or would soon overtake them; they all unconscious of its stealthy and deathly approach.

Speaking of a Witness, he said—His memory is playing tricks with him; his feelings are running a race with his intellect.

Speaking of the Story of a Witness as being false, he said—The story is as unlike the truth as a pebble is unlike a star—a witch's broom-stick like a banner-staff.

CASE OF ALLEGED FRAUD IN AN INSOLVENT DEBTOR.

The following is a case in which the names of the parties are unknown to me; and the extracts of the argument are

somewhat incoherent, although the general character of the issue is plain. The broken and abrupt extracts, however, will serve to illustrate Mr. Choate's way of bursting out in the course of an argument with sudden exclamations and surprising conceits.

The trial was in the Court of Common Pleas, Judge Washburn on the Bench. It was a case of alleged fraud in an insolvent debtor, and the plaintiff charged in four specifications, to wit :

1st. That since the debt was contracted the defendant has secured his property for his *own use*.

2d. That when he purchased the goods he intended to defraud his creditors.

3d Charge relates to the property in the boxes and the mortgaged property conveyed to his father.

4th. That at a particular time he discharged a debt against his father, and often had notes of his father's in order to cheat his creditors. Mr. Choate was for the plaintiff.

He said;—Gentlemen of the jury, this is a case of some considerable importance, yet when we look into it we shall see it is overrated. Every case which involves the principle of debt and credit is important. Lives there a man in Suffolk who has no sympathy with the criminal ?

We rely upon the humane and temperate justice of the law.

Imprisonment for debt, thank God, is blotted from the statutes

The Court will proceed with a wisdom we shall all appreciate ; and we, in our judicial capacity, shall administer justice and the law with lenity and care.

We said that the defendant has been fervent to the faith and credit that set him on his journey for life ; but this calamity came upon him, and he had not virtue enough to resist the temptation.

A most remarkable attack has been made upon the credibility of one witness, whose evidence is fair as the morning star.

In considering the next fact, it becomes us to throw off our manly sympathy and erect ourselves for the dignity of the law.

It is the second day of his extremity, the night of his sorrow, the storm which will shipwreck his golden hopes.

We say he took three hundred and thirty-one dollars—of West India goods, as my learned brother calls them—consisting of shovels, hoes, and other hardware, delivering it to his parent—a too parental hand.

He failed ; but seventy-five per cent. comes like dew upon the parched flower, to quench the thirst of the care-worn creditor ; and bids him sit down in the security of peace. I am almost ready to ask the judicial indignation of you, Gentlemen of the jury.

It is the most bald, the most shocking fraud, with which our mercantile community have been startled from their sleep since that first primeval morn when the honest Pilgrim first left his honest footstep upon the sands of our glorious New England.

We are not to reason here upon the calamity of the general chances of trade—this man does a snug business—trusts next to nobody—what his expenses were you are to judge—that he did not spread himself upon the sea of extravagance, and buffet this strong current.

The father of the defendant comes here with more than the feelings of a father—he comes here to wash his hands of the same crime which his son is charged with. Old age shows not the frosts of disappointment; it wilts not when accusation is brought against it; but a young man is blasted if a black spot is stamped upon his reputation.

I do not know why I should not stop here, and hang up before you the black chart of his whole career, and let you judge of his motives—his red acts of crime—or his overstrained honesty in paying his creditors.

Every line, every assertion, every representation, wears upon the face of it deception, dishonesty;—the blackest fraud that ink can mar the purest sheet of paper with.

Nobody knows any thing about these losses, he says he has experienced; and it is a most painful truth that all these things are carried out in the most minute detail to cheat the persons who extended the patronage to him—his pillars in trade and his victims, to prey upon them; and then he cries out, “Trade is hazardous.” But his trade was a safe one. It was no shaking of dice or hazard; it was a sure game, and he pocketed the stakes before he won—forsaking even the motto, “Honesty among thieves.”

That wallet in which the notes were, haunts me; I go for the wallet; which is a trashy thing at best, but in this case contains the jewel which we are warring for—“The wallet is the thing!”

It was no raw experiment, but one full of craft and low intrigue.

Was it true that he stood upon this fearful chasm and trembled not; but firmly told his tale of flattery, and

gained the credit to the amount of forty-one hundred dollars ?

It was a dreadful lie ! and he shadows forth from his dark heart the intent to defraud—he knew the men whom he was to buy off—he stole their confidence ; a rich treasure.

It is never unseasonable to bring to the Court the fact that a witness always tells the truth—it does not set the foul stigma of perjury upon his heart.

Try witnesses not by caprice, but by the legal standard—else the law is a laggard—else you hazard your homes ; his father testifies ; we know he would save his son at the price of his blood—his own right hand would be a small sacrifice for him. Trouble is in the camp. But the young life is not to be worn out in the jail, even if convicted of this fraud ; but *that wallet* is to be unclasped and the contents scattered to his fainting creditors—not fainting, but honest men who have toiled, and won the rewards of labor.

I appeal to his Honor, who is to sum up the ardor of this debate, if the father could be charged with perjury, or at least be held as criminal, if, to save his son, he has not sworn the truth before us.

An empty bag can't stand up ; but look at the power, the veracity, the spirit, memory, soul he has ; but he has also an infirm virtue which has lost its luster.

I am sorry to cause any uneasiness on your part, though the trial is lengthy—for this is an important case, and requires a careful attention, and will, I trust, lead to a just verdict.

The association is good for minds blunted with age ; may it please your Honor—experience teaches this.

When that miserable ceremony was enacted, the note was mutilated, and cast upon the floor. The new note was in the wallet of the young man, tied up closely—chained with white tape, a countryman's tape. And then the defendant takes the Poor Debtor's oath, under those circumstances.

Is there any color or pretense that the law of Imprisonment for debt, which has been abolished, is to take effect in this trial? God forbid such an outrage.

The universal business morality is debauched by an acquittal of this man under the present state of the evidence.

He is quick, keen, knows when to hold his tongue, with the cunning of a bushy-tailed fox—all's right. It's the Jack Robinson game; presto, change—money under the cup; shallow philosophy!

You, gentlemen, sitting here upon your oaths, the good men of your county, the sagacity of Suffolk, the nerves of the law—if you can conceive that black is white, you can reconcile these acts as innocent ones. No, gentlemen, the *Evil One was in the wind*, and he blew the dust the wrong way! We have tracked them—we have treed them; and now they look down-spirited. Well they might, with such a sin upon their hands, and the frown of offended Heaven resting upon them!

Where is the blank book? Where is the wallet? Echo answers, "Where?"

There they sit, folding up their arms, with the same perpendicular position as their counsel, both mentally and physically.

Where is the blank book ? “I looked,” said Falstaff, “and sent for a dozen yards of taffeta, and to my surprise *they sent me security.*” This is a parallel case.

The defendant’s case breaks down—it’s dead—down under the last leaf of the blank book where the 412 is ; that last leaf is the epitaph of the case ! It is their tombstone !

We see him shoving out to the tune of twenty-seven hundred dollars. God forgive us when we complain of too much light from his bounteous hand. This is the situation in which we are placed.

It is not a fiddle-stick’s importance *how many* notes there were.

With the oath of God upon his conscience, his father’s notes on hand, he feels safe, secure ; dreadful, shallow, wicked, up to the very length of his dwarfish height.

You are the judges of this case, and I’m glad you are ; and if you have the least doubt as to the design of this man, you will give an acquittal. If not, you will convict him of the fraud.

John Small, the witness, sits in court, spectacles on nose, and was summoned last evening ; and, upon examination, we are led to think that he grew blind, not reading his Bible, but some base fiction, which has led him in the wrong path for this once.

CASE ON SUNDAY LAWS.

The next argument of which I have any extracts was an indictment found against a defendant for violation of the Sunday laws, which in Massachusetts were very stringent. Mr. Choate went back to the origin of the Sun-

day legislation, and the general religious ordinances of the Massachusetts colony. He showed how severe the early ideas were, and the absurdities that would result if those provisions which still remained were literally and not liberally enforced. In reference to the construction of the particular statute under consideration, he said :

We have annihilated the bigotry and mysticism which blinded our fathers. There has been a continued revolution going on in the laws ever since the public mind gave them birth, and an enlarged view of morals has obtained.

Showing the practical inconsistency which prevailed in the enforcement of this class of laws, he said :

The Massachusetts commonwealth which is embodied in the Attorney General—this Massachusetts commonwealth has her great Western Railroad, and she comes thundering and rattling *into our city, and her passengers come, and the hacks* go and bring them home, *but no one is arrested* ; the steamer arrives, the flags are raised, the post office opened, the citizens running to get the latest news, if flour has risen, cotton fallen—and *no one is arrested* ; Marshal Gibbs is not on the wharf to see if a merchant goes into his counting-house, takes his papers, sets his ship adrift ; he does not come up here and get out an indictment against our merchant. “Oh, ye hypocrites ! straining at a gnat, and swallowing—a steamer.” You gentlemen, will swallow no such thing !

Again he said : The fears and imaginations of that generation were vain as air. They thought unless *law* urges men to the support of religion, some strumpet will be dressed up as the Goddess of Reason, and Bostonians will fall down and worship her.

Mr. Choate was very fond of Patent causes. He took a

vast interest in invention. A case where he defended the new adaptation of a machine for making and winding thread, gave him occasion for much brilliant apostrophe and allusion. His national allusions, in the following excerpts, are very striking. The extracts are fragmentary, but intelligible :

PATENT CASE OF THREAD-MACHINE.

The case was opened to the jury by the senior counsel, Mr. Choate. He said:—In the great singularity of this case, I shall confine my attention to the facts.

This suit is, indeed, a singular affair ; no instance of a like character ever has occurred in this country before—or under the American heavens.

The productions of the most gifted minds in England have been *adapted* to our own benefit when it was deemed necessary. Time out of mind, time immemorial, like a universal custom, it has been repeated. It has been the custom in France, and nearer to us ; and the moral right has never been questioned.

The family of nations have recognized the practice, and it is the law of nations.

In cutlery, needles, pins, cigars, drugs, imitations have been made which bring the great and grand originals into public notoriety.

The manner and taste, the æsthetics, have been a studied branch, and engravers have kept them on hand for sale ; they do it with alacrity ; the configuration is got up by others—from these the architect borrows his designs as a matter of taste.

They have gone on and made this thread, so far as the

earthly fluctuation would not interfere with their business.

The notion has been spread in community that mischief was going on ; this was by agents. A bitter complaint was entered against the defendant, under these singular and novel circumstances.

Mr. Carpenter, the defendant, being so little fond of law suits that he paid the fine, with the expectation of never being again troubled ; they gave encouragement to that effect. It was the only inducement for such a settlement.

The law is recognized between subjects in England ; but as between citizens of countries in proximity with them is not known ; great respect is shown to this law ; and under it they have rights attached there ; and the courts do not rule against the customs of ages—they do not rule against all habits of business. Legislative action is necessary here in our country. This catching up, trapping men is not in their practice.

And as for the mere imitation, we have a right to make as good an article as England, and diminish their business ; if the law is vigorous in punishing men who sin with their eyes open, they will have “justice though the heavens fall.”

Yankees’ claims are dear to them as England’s rights are dear to them ; they are now to be protected *by the broad shield of justice—law is the guardian angel of our land*—the intercessor between right and wrong.

The jealous policy of England comes into our midst with its lion face, and says “Nothing is good but English,”

and it has been the notion ground into our minds ; the light of civilization gleaming with its brightest luster can not do away this idle, foolish prejudice ; but the notion is one against American industry.

The experience of protection to our honest yeomanry engaged in American manufacture shows it is wise policy ; it has become our economy to purchase our articles at cheaper prices. There is not room for all England's inventions ; we claim some credit for the genius of New England sons—her inventions, her improvements.

If the acts of these persons manufacturing contemporaneously with them were injurious to their traffic, the cause of this diminution of their trade is long as time, voluminous as the world.

The wondrous changes in the price of cotton and other things, *make the world tremble*. England's heart-pulse beats quicker ; her eagle eye grows sharper. She gazes discriminatingly on our growing business, and grudges us every well turned dollar from our mint. But new light flashes out from the Empire City—the great business mart of our republic—the pride of our land ;—it dims their English vision.

These plaintiffs ruined their own reputation by making poorer thread ; abusing the wide-spread confidence they had attained in the community, in this world of ours. Theirs had become notoriously poor. But ours is a vast advance. Look at our thread ! Beautiful ! new ! What novice country girl would not rather use a new thread of her own husband's manufacture ? It is the genius of spirit that inspires them with new zeal, and this new article never injured any one. Goodness is not productive of

evil. Every thing has its day. "Every dog has its day." This has had its day ; new plants spring up and o'ershadow the old. This is the law of nature—the law of our being !

This defendant is not to be borne down with the sins of all the impostors of the day. We are not the scape-goats of crime ; we come up to meet the charge, as soldiers come up to battle, with stout hearts, and souls of vigor, honesty, and good faith. Let them charge home their bayonets ; and the verdict will be ours, or at any rate one of lenity.

This thing is brought up so strenuously—so continuously ! Let it not fill up your whole eye, as a small acorn brought close to the vision will hide the whole eye, and hide a whole forest of the fairest hopes. The *to be* is to be proved ; that he conspired to defraud these men of gold, of fortunes,—men with long-stringed purses of their rights.

I tell you, Gentlemen of the jury, the reputation of the defendant's counsel (himself) is much better than the *thread* of their client.

This is a commercial article, and a captivating one ; offering it at a lower price, and getting the good will of a trade, it holds the customer. The world goes along elbowing, and every man elbows his own articles into the markets. If a man's article is a good one, it will pay him at home ; in the same way as a good book or painting will render profit enough, without extending the traffic to a foreign market.

They, the plaintiffs, are to prove that the extent of damages were more than nominal, in order that they

should have just cause to bring this action ; that it is not due to holding their thread at higher prices, and at a ruinous loss to the purchaser.

I leave the cause for the present in your hands, Gentlemen of the jury ; but it will be considered more ably hereafter by the eloquent advocate who is to precede me in closing this long and fatiguing case. It is of great importance to this man ; it is one which will result either to his permanent advantage or injury. With this idea uppermost in your mind, and in accordance with the law and evidence, you will shape your final verdict. We shall now submit to the consideration of your mind the testimony of the defendant.

But remember, this man made the best article he could, and sold it as his own manufacture : no fraud, no imposition was practiced by him. However gross the fraud may have been by his agents in disposition of the article, he is not accountable for this ; they are liable for their own acts of wrong, and they can not be imposed upon this man, if the justice due to him is rightly administered, and equity takes its serene course.

Remember, also, that the improvements, the invention, the progress of civilization, are a great incentive for men to develope the powers of their minds, in rivaling others who bring before the public the product of their persevering labors and untiring industry. So “wags” the business world. Ambition, the love of gain, the regard for wealth, is another new impetus to action, and urges men on to the work. Others do the like acts, and not at the expense of reputation or the profit accruing from their exertion.

Such never was the case. Such, I hope and trust, never will be the case in this land, or in any other mercantile country on earth.

POWER LOOM PATENT.

This was a case where an alleged improvement was complained of as an infringement. Only a single sentence—single but striking—of Mr. Choate's argument for the defendant survives ; this I happened to write down.

Speaking of a witness, he said,

His expressions are somewhat vague, but they are to be construed as the common speech of the land ; the man was speaking the language of the land.

Does this inventor, the plaintiff, think to monopolize power looms for the rest of his life ? Centuries have been consumed and nations employed in perfecting this loom, and because this inventor has taken one step in its progress is he to have *the whole* as his own ? No, gentlemen ! Whatever his inventive power, *he didn't come early enough into the world for that !*

PETITION FOR A RAILROAD FROM SALEM TO MALDEN, BEFORE A COMMITTEE OF THE LEGISLATURE.

In this case the whole argument of Mr. Choate in support of the petition is preserved. Extracts are here given sufficient to illustrate the whole scope and force of his argument, and the glow of his rhetoric, even upon these worn and threadbare themes. The Committee having been called to order by the Chairman, Mr. Choate said :

Mr. Chairman : This application is felt to be one of very great importance by that considerable portion of the community who have presented it, and the case before you very well entitles itself to be dispassionately considered and wisely disposed of.

Not having the honor to be one, either of the Committee or the Legislature, I feel very sensibly the delicacies of

attempting to assist you and your colleagues in the discharge of your duties. But it has been the immemorial practice to admit counsel before committees, and I shall aim, therefore, to perform the duty now devolving on me with the same zeal and frankness that I should use in other Courts lower than this—the highest of all. And if, as may perhaps happen, from friendship to the petitioners, from a strong conviction of the merits of their case, or from whatever cause, I may pass beyond the limits of entire accuracy in the statement of the facts or the conclusions from them, I am sure the Committee will be as indulgent to excuse as they will be prompt to detect it.

And first, let us go back to the origin of this application. It does not spring, as argued by the other side, from any speculative railroad mania of to-day or yesterday ; it is not asked for to supersede any other road, old or recent. If some think to trace it to any so small policies, they are mistaken. Such is not its ground. It had its origin many years back—as far almost as the birth of the railroad system. The great public wants, in 1836, succeeded in procuring the charter of the Eastern Railroad, the lower route, but the same parties now represented by the petitioners were here then. They come now with the added growth, the added experience, the added inconveniences of ten years more, but they were here then, and have been still here. In all previous stages of the great legislative deliberation, anterior to the actual grant of that charter, it was a matter of sharp and serious doubt, in the public mind, what line should be adopted between Beverly and Boston. As long ago as then was this sharp conflict and grave doubt between the lower and the interior route. The petitioners were not inattentive to their own interests at that time.

Danvers, full of energy, of capital—the capital of middling men—that species of prosperity commanding more than all others the favor of government, full of industry, ever true to her duties, from the time she sent her sons to the battle-field of Lexington to the day when she appropriated her last dollar for the education of the poor—Danvers was here then. Lynn, that vast beehive of work-shops of Essex, was here then. Saugus, of which the learned counsel has spoken in so condescending and contemptuous terms, was here then.

Unfortunately they were obliged then to combine on a much more unfavorable route than they are now enabled to offer, terminating on a ferry perhaps even worse than that of the remonstrants themselves ; but with all that, it was better than the present road. And now, when their route has the vast merit of offering a speedier, surer and safer conveyance to Boston—avoiding a ferry altogether—they come again to apply for their old and favorite line, and they will persist in the movement, which, springing out of the unalterable nature of things, must from very justice be granted at last. They originally urged that the lower route, the then line from the south side of Salem, creeping across a desert, plunging through a marsh, arriving at deep water at East Boston, where the ferry boat was exposed to all the detention of fog, ice, and other impediments, and leaving at last the disconsolate passengers in an inconvenient terminus, far removed from the business and inhabited part of the town, they urged that such a railroad deserted and abandoned their peculiar interests, and was no railroad for them. They denounced it accordingly, and fully and fairly gave notice that they should not cease to apply for relief to the Legislature.

The road has been tried, and fully tried for ten years,

and these same parties are here again for relief. I speak of these things to show that this is not a temporary movement, but that it springs from the reality and nature of things, and that it confidently awaits the action of the government.

It was an easy thing in 1836 to meet our arguments by small jests and bold promises. It was easy to tell the Legislature that the business and resources of the road would draw into use the ingenuity and experience of the skillful and inventive, so that ferry boats would soon be constructed with rail tracks on board, easily able to convey a train of cars from one side to the other. But who has lived to see this? We have indeed seen some two hundred men, women, and children crossing in fog and obscurity, steering by compass, like Columbus in his caraval, uncertain what land they should make, but nothing like this. It was far easier thus to talk than fairly to answer our arguments or meet our case, and this accordingly was the course pursued. The small laugh was raised, the stupendous blunder was committed, and the Eastern Railroad was chartered on its present route.

Now, sir, who are the parties to the application before you? On the one hand the public, that is, those who are, in the contemplation of the law and of reason, the public; and on the other hand some small private interest.

God forbid that I should stand here and ask you to violate one single private *right*, though of no higher value than a blade of perished grass. No, sir, no. And even were any one so to do, I well know what would, and ought to be your decision. But this is no such case. It is the ordinary case, simply, of the many against the few. The

great interest of the great public, against a minuter interest of a small portion of that public. Interests only, not rights, are concerned. Here are four large towns, with 25,000 inhabitants—two represented by a corporate vote, and the others by the signatures of a large majority of their legal voters. Salem, stung by the very taunt of the other side, sends to-day 650. There are, too, from 1,000 to 1,200 of the women of Essex—our mothers, daughters, sisters and wives—who ask us for the removal of an offensive and shameful annoyance, to which they are subjected on every journey they make to the metropolis.

Danvers, the original petitioning town, is the third in Essex county for the vote she throws and the capital she wields. She is a larger manufacturer of leather than any other town, and manufactures also great quantities of wool, iron and glue. Besides all this, her agricultural capacities are sufficient, if aided and encouraged by legislation, to make her one vast garden, or rather a vast series of gardens, for the supply of the market of Boston. She is before you, a petitioner for railroad accommodation.

Lynn, too, is here by a series of admirable and powerful resolutions, to which I will ask the attention of the committee. (Mr. Choate here read the resolutions.)

Such is the voice of Lynn, presented and supported by the men she most delights to honor—her selectmen—her Hoods, Webster, Breeds, and others.

I have already referred to the number of petitioners from Malden and Saugus, and other towns, whose names are before you.

But our learned friends laugh at all this, and say that nothing is more easy than to procure as many names as you please to any petition. If this be so, I wonder, then, why they have not employed more pens in their own be-

half. Why, sir, in the face of this overwhelming evidence of public opinion, not one human being—man, woman, or child—not one interest even, but just the Eastern Railroad corporation—appears to remonstrate against this petition. It is the traveling public on one side, and the men who live by selling traveling accommodations on the other—and that is just all.

But this particular demand may be unreasonable. Let us look, therefore, a little further into the details of the case, in its simplest and narrowest aspects. I say, then :

1st. That these petitioners, or a large mass of them, are entitled to increased facilities of railroad transportation—on every principle of policy which can be sustained, and by every particle of evidence offered—by branching out, either to one or the other of the eastern roads :—and,

2d. That, by permitting them to make their branch to the upper road, the great aggregate of public good and public accommodation will be vastly more promoted than by compelling them to resort to the lower.

Upon the first proposition, that the parties are entitled to increased accommodation, there will be no occasion to detain the Committee long. The fact is perfectly clear, and no longer open to controversy. Danvers, by the concession of everybody, on every principle that the Legislature ever gave or withheld a charter, is entitled to it.

But the counsel says that Danvers is very near to Salem. Yes, sir, she is the adjoining town. Her people are just near enough to hear the whistle of the locomotive, and to gaze at the sparks of that flying giant—to them as ourselves, for all practical purposes, as are the falling meteors in the midnight firmament? Mr. Chairman, this is a sin and a shame. And so we hear it said on every side, by

every committee and every counsel, excepting only the *counsel here*.

But we shall have a very inadequate idea of the advantages of this road if we regard it merely as a means of facilitating transportation to and from the city.

That is not all it will accomplish. For the towns of Saugus, Lynn and Danvers, and Lynn, in particular, abound in numerous beautiful sites, which promise to become, through its agency, most eligible residences for persons of moderate means who do business in town. Grant this charter, and these situations will be purchased, built upon, and soon show forth as the happy abodes of civilized life. Is all this nothing? Is there, in the estimation of my learned friend, who has acquired a reputation so enviable through his able assistance to the cause of railroad progress, and who, I am sorry to see, so forgetful of that reputation as to appear against my clients here—is there no use in a railroad but to precipitate the traveler from the country into the city, at top speed, and ejaculate him out again as soon as his business is completed? Are there no moral influences in railroads? Is it nothing that they afford the business man, whose six months in every year are passed amidst the crowd, dust and turmoil of the noisy streets of town, the opportunity to pass the other six in the bosom of a happy family, at a quiet and secluded country seat? That they give the pale and wan denizen of the noisy workshop and dingy counting-house the means of invigoration and health, from the breezes of the country hills, without detriment to his worldly prospects or the sacrifice of valuable time? That they cause the capital of the city to flow into the country through ten thousand streams, beautifying and fertilizing the whole land? Sir, I entirely

agree with the writer in the Westminster Review, already quoted on each side, that these moral and social influences of railroads are the considerations which most entitle them to favor.

The new road may indeed take a twentieth, a sixteenth, a quarter per cent. from the value of the Eastern Railroad stocks ; but if, through its means, one hundred, fifty, twenty, aye, ten healthy children, are raised to manhood and womanhood, the Republic will be the gainer.

Therefore, I say, our right to additional railroad accommodations is fully established. Then, how shall we have them ?

Prima fronte, Sir, it would seem to be the inclination of a just and parental government, to give its citizens the accommodation they seek in the way they seek it, if that mode be not unjust or capricious. Now, gentlemen, here are Danvers, Saugus and West Lynn, who have appeared before you and made out a clear case of the necessity of *some* additional accommodation. The case is just as good for the particular accommodation they ask, as for any. The petitioners feel profoundly and keenly that they shall be greatly better satisfied with the accommodation in the mode they ask for—with being treated like men—free agents, allowed to assist themselves and develop their own internal industry—than with being compelled to content themselves with what the Eastern road may choose to give them, and walk only in the path which the Eastern Corporation may prescribe. And again I would remark, without intending to be and hoping not to appear importunate in the least, that a just and parental government, if it properly can do so, will grant the accommodation it affords in the way in which it is sought. Good nature dictates so

much. A just and sound policy dictates it. If a little facility be granted to us, but not the facility we desire, it would seem to be next to refusing it altogether. Certainly the father who, being asked for a fish, gave his son a serpent, was the harder of the two; but that other father can scarcely be said to have shown a parental and kindly disposition, who, being asked for bread, choked his child to death with fish.

There is one most desperate after-thought presented by the remonstrants, and that is, that no more parallel or competing lines, as they call them, should be chartered to any point of the compass. There being already, in other words, established railroads, towards the north, south, east and west—great roads, if you please, and we will allow so much,—the position is taken that all additional accommodation is to be had only by branches from these great roads, perpendicular or diagonal, to the communities to be favored. And this enormous heresy is carried yet one step further; and that is, that nobody, except these main corporations, has any right to construct branches at all. The branches, if constructed at all, are to be built only by great routes. If this be really so, then it becomes a question of extreme interest to all inter-lying populations to know to which road they belong; “Under which king, Bezonian, speak or die!” Who owns us? Who is to make our branch? These will be the questions.

Gentlemen, I pray your attention here to the specious plausibilities which make up the whole case of these remonstrants.

But, gentlemen, giving all that to the winds, by granting the charter we ask you will more promote the various and considerable aggregate of public accommodation, than

if you compel us to be dependent on the road of the remonstrants. Because you will enable travelers to avoid a nuisance, and to gain in speed: and you will afford railroad facilities to thousands of people, and large quantities of merchandise, of which they are now wholly deprived, and will continue wholly deprived, even if the Eastern road builds its so-much-talked-of branch. By building the new road we offer the people a communication with the city, over a secure, substantial, permanent bridge, instead of compelling them to take the chance of swimming, and the risk of sinking in a ferry boat. I do not fear to discuss the comparative merits of a bridge and a ferry with the ingenious and eloquent counsel for the remonstrants. And I can not, in the outset, blame at all the Eastern Company for striving to make the best of their case. Their route has been fastened on them. The blunder has been made. The past is incurable. The necessity of steering by compass and the sound of the fog-bell, is upon them, and they can not avoid it or get rid of it. They do right to defend themselves, and nobody can blame the pretty, poetical little fancies in which they indulge. "What can't be cured must be endured;" and I will do the whole body the justice to say that they have gone to the very verge of veracity in making their defense. But, Sir, "*de gustibus non est disputandum*." The learned, though somewhat fanciful gentleman, has eloquently set forth the delight which must be felt by all, in catching an occasional glimpse of the harbor as they cross in the boat. As if the business people of Danvers, Lynn or Saugus, would care to stop, or think of stopping to gaze upon the threadbare and monotonous beauties of Boston harbor, when hurrying to transact their affairs. Unfortunately, too, for the gentleman's case, in this respect, it so happens that

these same people have compelled this company to arch their boat all over, and wall it up all round, so that nothing at all can be seen. Then the delight of meeting and shaking hands with an old friend ! Conceive, gentlemen, the pastoral, touching, pathetic picture of two Salem gentlemen, who have been in the habit of seeing each other a dozen times a day for the last twenty-five years, almost rushing into each other's arms on board the ferry boat—what transport ! We can only regret that such felicity should be so soon broken up by the necessity of running a race against time, or fighting with each other for a seat in the cars.

They urge, however, that the passage is short, only eight or ten minutes—an average of nine by “Shrewsbury clock.” I regret, too, that these minutes are so much less profitably employed by our friends, than by gaining three miles of start on our railroad. And they agree that the average of detention, over this nine or ten minutes, has only been four seconds. What does that profit to him who has been delayed six hours ? Or to him who has lost the opportunity to pay his note at the bank by ten minutes ? Or to him who stands, for hours, at the slip, and sees his wife or sister tossing about in the ice within six feet of him ? Why, Sir, you might as well go to the soldier, on the eve of the battle, and say to him, “You will be killed, I dare say ; but consider that your death is an average of only one good scratch a piece distributed among your regiment ?” Will he thank you for such consolation ? I rather suspect not.

That gentleman shows that the corporation have tried every expedient, and taken every measure to remedy all inconvenience. I agree with him, and will take his own argument to prove that the evil is permanent and incurable.

Mr. Chairman : In approaching the close of the remarks with which I have to trouble the Committee in this case, I beg leave to present, in a condensed view, the points on which the petitioners rely.

That increased railroad accommodation is due to Danvers, Lynn and Saugus, is not only proved, but not denied.

That of the alleged two methods of securing such accommodation, by a branch from Danvers to the upper or to the lower route, that which we propose is decidedly favored by the whole public, while it is opposed only by the private interests of the Eastern Railroad Corporation.

That to more than 110,000 passengers per year, our road will afford a passage to Boston by land, avoiding all ferries, and in all respects, speedy, safe, secure, comfortable and agreeable.

That it will give accommodation and railroad transportation to 30,000 tons of merchandise now deprived of such advantages.

That it will accommodate the trade of Danvers, Marblehead, Lynn and Saugus, which the present road does not.

That it will greatly aid and increase the trade and productions of Essex county, in various respects—especially as regards granite, ice, bricks and fish—while the Eastern route and its branches can do nothing towards this purpose.

That it has a much more central and convenient terminus in the city of Boston than the Eastern road.

That it will afford to the town of Saugus railroad accommodation never yet enjoyed—to West Lynn greatly enlarged accommodation ; and that it will, in both towns, materially increase the value of now unoccupied lands.

In this aspect, sir, which I conceive to be clearly established throughout, I take it there is no room for delibera-

tion at all, unless the Committee are satisfied that we are, body and soul, the property of the Eastern Railroad Corporation, and belong to them exclusively. It is possible that the grant of our petition might interfere with the pecuniary advantages of the stockholders of the Eastern road ; that it might detract one, two, three, four or five per cent., as the case may be, from their annual profits. But of what account is that when we consider how much it will add to the convenience, time, comfort, health and life of the 45,000 passengers from Danvers and the many other thousands along the line ? That it should take a half per cent. or three per cent. from the profits of the Eastern stockholders, I regret as much as my learned friend. But I put against this private loss the increase in the value of every pound of leather and glue, every ton of iron, granite and ice, to the public at large. We may perhaps diminish the wealth of a few hundred individuals, by a small amount, but, on the other hand, we stimulate the industry, quicken the labor, and develop the resources of thousands upon thousands. Look upon "this picture and on this," and then decide the question on rational grounds.

But my learned brother, whose extensive and well-earned reputation mainly rests upon his successful exertions in favor of just such lines as that we now ask for, can not have meant to deny the general benefit to the public resulting from the principle of competition itself. Why, sir, *prima fronte*, competition is the life of trade and the great promoter of public good. It may, perhaps, sometimes be otherwise in railway experience, for circumstances alter cases. But the result of the whole history of English experience, on this subject, is, that competition among railroads has done no harm whatever, except, in some cases,

to slightly raise the fares. There are no deserted tracks from this cause ; there has not been a pin's worth of damage to the hair of a man's head. In some cases, it is true, competing lines have become united under one corporation, and fares have been somewhat increased ; but the general, grand result, has been the establishment of a system of railway communication, the like of which the sun has never looked upon. And if this evil be apprehended, what can be easier than for the Legislature to fix the maximum of fares which shall be charged ? In truth, Mr. Chairman, all the arguments of my learned brother, respecting competition, are entirely unworthy of him, and—were they from any other source—unworthy of serious notice. Why, sir, our State map beams and sparkles, like the firmament, with competing lines.

And I join issue with my brother, in his statement that it would be bad policy in the State to grant this charter. Bad policy to meet a popular demand by a legislative supply ? We have shown that railroads were made for the people, as the Sabbath is made for man, not the people for the railroads ; and I will only say—replying to the gentleman—that the bad policy would lie in refusing this application. If the people shall see, in a case like this, that the government disregard the rights of twenty-five thousand inhabitants, having occasion to send and receive 30,000 tons of merchandise per annum, from the apprehension of a contingent effect on existing railroad stock—then, sir, the days of that administration which sustains such a policy, are numbered. The inscription is written, “Mene, Mene, Tekel, Upharsin !”

Sir, I know the people of Danvers, and I owe them much. I judge of the rest of the citizens of Massachu-

setts by them, and so judging, I know them to be honest, just, and ready to sacrifice the last drop in their veins rather than infringe the legal rights of any individual. And I am entirely satisfied that such a people will not be called on to see it declared through their representatives in the Legislature, that the servant is greater than his master ; particularly when the servant is a private corporation, however respectable, and in other respects however generous ; and that master the whole public.

“For this is not the liberty which we can hope, that no grievance ever should rise in the Commonwealth ; that let no man in this world expect ; but when complaints are freely heard, deeply considered, and speedily reformed, then is the utmost bound of civil liberty attained that wise men look for.”

THE OLIVER SMITH WILL CASE.

This case attracted very great interest in its day, from the magnitude of the property involved and the celebrity of the counsel employed—Mr. Webster for the will, and Mr. Choate against it. It was argued in July, 1847. The will of Oliver Smith was disputed, and the whole case turned on its attestation. One of the witnesses to the will was T. P. Phelps. It was alleged that at the time of making his signature upon the instrument he was insane. He appeared upon the witness' stand, and was subjected to a long direct and cross-examination. The evidence being all in, on a Thursday morning, in a court house crowded with people, very many ladies being present, Mr. Choate spoke for three hours. An abstract of the argument was reported, and from one of the few copies still extant I make the following extracts. Although the abstract loses much

of the force and fire of the rhetoric, it preserves the strength of the argument.

Mr. Choate began by remarking to the jury;—The heirs at law of Oliver Smith, the children of his brothers and sisters, have brought this case before you, under the full conviction that the instrument here offered for probate ought not to deprive them of their inheritance. It is not surprising that they have come hither in confidence that you will thoroughly investigate their claims, and equitably adjust them. Ever ready and offering to make a compromise with the legatees, yet not willing that this whole estate should pass from the name and family of the testator, by the mere *forms* of law, and against its spirit. They are not *distant* heirs, coming from a far-off country to claim this estate. But they were near, and once dear to the testator. They dwelt around him, rendering those nameless kind offices which ministered to his comfort.

To a valid Will the law gives absolute effect; and if the testator has complied with the *forms* of law, the will must be executed, however absurd or unnatural its provisions may be. Surely such a will as this could never have been anticipated; it was not to be *dreamed* of. It was natural that those who had lived around him for fifty years, his relations by blood, should expect from their uncle, a bachelor, at least some token of his remembrance. Had he seen fit to divide between them and the devisees, regarding as well the claims of blood as of the public service, as we are now ready to do, the labor of this investigation would never have fallen to you.

No doubt the owner of property, by complying with the provisions of the law, may disinherit the child of his loins. The law *first* provides for heirs, and says, that while a right will may deprive them of the inheritance, yet the

forms of law must be strictly and rigidly followed. The reason why the law provides that property shall descend to heirs, in the absence of a will, is not that *somebody* may be made richer, but to save the rush and scramble that would ensue if *everybody* had an equal right to the accumulations of the deceased. While a relative exists on the face of the earth, the law seeks him out; and not till the most diligent scrutiny fails to find an heir will the law interpose to take such property for public uses. And this is according to nature and the eternal fitness of things. Therefore in every code, by every lawgiver, in every age, the right of the heir at law has been held first and most sacred.

Still a discretionary power is given to disinherit heirs. But it may be so cruelly, so suddenly, and so capriciously exercised as to disappoint the most reasonable expectations. Therefore, while the general power is sacredly secured, every law provides a great variety of *forms*, complying with which the testator may disinherit his child; but failing to comply with them *there is no will*. The ties of blood are then regarded. Then the first and the last will is the will of the law.

The Will of Oliver Smith is not according to the forms of law.

The law requires that every will be attested by *three* competent witnesses—competent to inspect the mind of the testator—competent to judge of the whole transaction. The principal object of this provision is to protect the heirs at law, and in a limited degree only to protect the testator. For the protection of the heirs, the law provides that the testator shall be surrounded by three competent witnesses, to read the mind of the testator. In the present case we have not such witnesses. We are entitled to three *minds*, and not to three *bodies* merely. We are entitled

to three *whole* men—men independent of each other, but we haven't got them.

Generally, men do not make their wills until old age or sickness is upon them. It is when the testator approaches the line of imbecility that the security of witnesses is required, lest cunning men come between him and his child.

Mr. Choate proceeded to state his views of the legal meaning of a *competent* witness to a will. He must be able to "try the mind" of the testator, and judge of his sanity. On this point various authorities were cited and commented upon, particularly the opinion of Lord Camden, who ruled that a witness to a will should be able to "inspect" the mind, and test the capacity of the testator.

Mr. Choate then laid down the proposition, that Theophilus P. Phelps was not such a competent witness, which he maintained at length, upon a review of the testimony in the case.

Look at the manner in which the transaction was done? What was done to test the capacity of the testator? Nothing at all. Here was an old man, upon the verge of the grave. Neither of the witnesses were acquainted with him—never had spoken a word to him and scarcely knew him. They were called in. The testator was asked if it was his last will and testament, and if he wished the witnesses to sign it. He said yes. They signed it and went away. The whole transaction was without the *forms* of inspection.

Witnesses to a will should be perfectly sound in mind. What are they to do? As before stated, they are to surround the testator, to protect the heirs at law. They are to *try the testator's mind*. Think of Theophilus P. Phelps

trying the capacity and sanity of Oliver Smith? The witnesses are also to protect the testator, whose hands may have outlived his head, from imposition.

To perform such a function, the witness must possess quick perception and close observation. The mind that reads the spirit must be free from morbid influences, and must be in a perfectly normal state.

Theophilus P. Phelps is the son of an educated and able man—grandson of the illustrious Theophilus Parsons. It was natural that he should be destined to a profession. He went to college. For the first, second, and third years, he was cheerful and social, and in these respects in no way unlike his fellow students. In the latter part of the third or the beginning of the fourth year, he was taken sick—not of common disease—but of a morbid disease of the *brain*. He went home once or twice, and was unable to perform his part at Commencement. It was then he dropped *mentally dead*—that day his mind died. Then began that strange pain and oppression of the head from which he has never since been free. From that hour to this a settled gloom has hung over him like a pall. His occupations in the field, and in the composition of his book, were struggles to work off his feelings. Life, from that time—save the brief period of mental excitement in 1843—has been to him a long sleep of the soul. For six years he has not entered the house of a neighbor; for six years he has not enjoyed the calm air of a house of worship. He has been ever eating his own heart.

In August, 1843, he was not mad for the *first* time, but *differently* mad. He then became visibly and openly insane. His eye, which was to inspect the mind of the testator, saw a conspiracy in his own brother. To escape from this, he attempted suicide. It was a disease of the

brain—of the nervous system. Such a witness is not what we are entitled to by law.

Mr. Choate then went on to argue that the burden of proof, as to the competency of the witness, was upon the party setting up the will, and that inasmuch as it had been shown, on the part of the heirs at law, that the witness was of unsound mind a few months before the date of the attestation, it became necessary for the other party to show a restoration. This rule, as to the burden of proof, was qualified by another rule; that where the insanity originated in some sudden, acute, particular cause, then there was no presumption that the insanity continued after such cause had subsided.

He then argued, upon the testimony, that no such sudden cause had been shown in this case, the accident of his father being inadequate. His mind never turned on the accident to his father. His disease existed certainly a month before the accident, on his return from Philadelphia, and whether it commenced at the close of his college life or not, it is indisputable that it existed from July, 1843, to December or January following. Unless, then, the other party show that after that time the disease was removed prior to July, 1844, the presumption is that he continued insane until that time.

The testimony in the case fails to show whether or not the insanity was so removed. If he were now on trial for perjury in 1844, would you convict him? The law would not hurt a hair of his head. It is of no consequence whether he be restored at the present day, that is wholly collateral to the issue.

His own account does not prove such restoration. In this Dr. Woodward and Dr. Bell agree. On the contrary, it proves him to have been incompetent to attest the will.

He was there present, but he now remembers the signing of only one paper by the testator. His mind was not there—he was brooding over some delusion.

He gives no reason for his recovery in December, 1843 ; none has been given. The same bodily disease continued, as before that time.

All that has been offered in evidence to prove his restoration before the attestation of the will is reconcilable with the continuance of his disease. An insane man can labor in the field, can compose a connected book, can take delight in reading.

Mr. Choate, in closing, recapitulated his three principal positions :

1st. That insanity having been proved near the end of 1844, the burden of proof was on the other party to prove a restoration in July following.

2d. That the testimony offered for the purpose was reconcilable with continued insanity.

3d. That every cause of his insanity at any time, is shown to have existed when the will was attested.

Those causes, said Mr. Choate, were partly the terrible pain and oppression of the head, which lasted for six years ; but mainly and chiefly his long idleness and solitude from the time when he left college to the present day. Mr. Choate dwelt at length, and with great effect, upon seclusion as a cause of melancholy and madness ; and concluded with a beautifully apposite quotation from “Burton’s Anatomy of Melancholy”—his closing injunction to those disposed to insanity—“*Be not solitary, be not idle.*” The reporter of this case adds :

“We have given above a brief outline of Mr. Choate’s argument, occasionally using his phraseology ; but we think

it bare justice to him to say, that no one but a short-hand writer can adequately report his language."

After a recess of five minutes, Mr. Webster addressed the jury for about two hours ; and his first sentence is picturesque and very complimentary to Choate.

He commenced by observing that in the case itself there was nothing extraordinary. It involved the attestation of a will. There may be interesting circumstances around it. The case turns a good deal on the character of a young man. The property is large. The heirs are disappointed. There is enough to make a scene and a picture. There is the canvas, and, as you have seen, *there is a master*. Things have been presented in a dramatic form. Dramas are made from common occurrences. The hand of a master gives them interest. The scenes of Shakspeare are more interesting now than when they occurred. It is a common remark that the Apollo and the Venus, and all statues, are but human works wrought out of rough stone.

Your duty is, to take the *common view*—to go to the real and substantial facts. The question is the Will of Oliver Smith.

March 30th, 1848.—Mr. Choate argued yesterday on the question of the boundary between Massachusetts and Rhode Island, before a Committee of the Senate.

I noticed particularly that in the monotonous level of his legal citation and reasoning and appealing to records, he would never allow his audience to flag, but would every now and then startle and arouse them by some peal of eloquence or witty allusion. Thus he broke out once like a flash of lightning in a dark day, from his tedious reciting, "When the eagle would soar to make her nest in the stars why did they not openly clip its wings?" His

light wit was not at all labored ; it seemed suggested by the course of remarks. Thus, speaking of Roger Williams, and subsequently of his lapsed charter, he said ;—" Sir, the charter was stone dead ; dead as Roger Williams." Again, ironically, " Why did not King Charles II. boldly say, ' I know nothing of my subjects' colonies, their metes and bounds, so absorbed am I in my metaphysical researches !' "

December 28th, 1848.—Heard Mr. Choate against Webster to-day in a divorce case.

Choate said of one of the witnesses, Either he had said truly, or it was a splendid improvisation ; and he ought to be *seized* for the stage, and would make his fortune there.

He must have sunk manhood's and boyhood's qualities indestructible. His evidence is confused, divided and diverse, like geological periods. First a grand granitic substruction of truth, a middle of silence, then a superstructure of speech, for testimony. Of another witness, who swore to looking through a key-hole, and withdrawing her eye, he said, Would she have seen *all this*, and *seen no more* ? Such another instance was not in the history of flesh and blood. She was at an age when women see *nothing or see all*.

Were their cheeks crimson with sated and extinguished passion ? She has sworn she told nobody for seven years. For seven years she drops it from mind ; then in sharp, bold, prominent outline, she reveals all. There are clearly defined periods in her revelations, like the rings round a hemlock rind.

He was a personable man. He was of the *ambiguous* period, when juvenescence merges into adolescence. To judge these jollities and frolics so, would be like monks, not men—Alcibiades with Aspasia. According to them, some woo the mistress and some woo the maid, but he woos both. Let us go back to a classic and heroic standard. He was not willful, he was playful, gamboling or infantile. But this witness did not dare to speak, they say. Why not? (he screamed out.) The witness was as safe, as if in Gibraltar with the whole British fleet outside.

To the libellant, may it please your Honor, the consequences of the decree are not ruinous. The love that lives once may live again. Some death-bed revelations of the false witness, some loss of relatives, the disciplines of Providence, may *medicine* his diseased and abused mind; but to *her* there can be no return from a *decree*. It is *death*.

CONSTITUTIONAL ARGUMENT OF MR. CHOATE,

Before a Committee of the Massachusetts Legislature, upon the tenure of the office of justice of the peace; and against the removal, by address, of James G. Carter, Esq., from that office; 5th April, 1849.

This case was a petition by certain citizens of Massachusetts for the removal of Mr. Carter from his office, by address of the Legislature. It was a case of novel impression; *impeachment* being the only mode generally understood, as applicable to remove an alleged judicial delinquent. Mr. Choate made a close, grave and learned constitutional argument. Some portions of it are given here. It was reported phonographically.

This proceeding has been carried so far, Mr. Chairman

and gentlemen, that it seems necessary to the respondent to carry it somewhat further, and for that purpose to present his answer to the charges which are made, and to produce some portion of his testimony in opposition to them. Before he does this, however, it seems to me to be his right and mine that I should submit a very few general considerations to the Committee upon the principle of the transaction in which we are engaged, and upon the actual posture of the proceeding itself as it now presents itself.

If I am not very much deceived, Mr. Chairman and gentlemen, in this matter, sober men, conservative men of all parties, and of whatever pre-occupation of mind against the respondent or his case, will agree with us that it is proper to pause, to heave the lead, to heed the compass, and to take the sun, if we can see it through the clouds, for an observation, before we attempt much further to push forward so new and so perilous a movement as this may be.

I do not know how this has struck others, and I do not know how it would have struck myself if I had held a retainer upon a different side, but I must confess that I have noticed with astonishment this mode of removing an officer by address, instead of the old-fashioned, decent, if you please slow, but safe mode of impeachment. I regard it as a bad change—as a sign of the radical times in which we live. Perhaps some power exists in the Constitution. But I confess that I have supposed, if there was one axiom of our Constitution better appreciated than another by every man of whatever party, in the just and proper sense of the term, it was exactly this: that this power of removing by address is the most dangerous in the Constitution—that it is altogether the most directly repugnant to our system of constitutional checks and balances, and that

as a matter of course it was not intended to be resorted to except in very important cases—in cases which should command the unanimous sense of the community, and even the sober second thought of the victim himself—that it should never be resorted to when it was in any degree involved in doubt, whether the person to be immediately affected by the action, or any one else, was within the reach of the constitutional provision for impeachment; and, above all, never to be resorted to as a matter of elementary procedure in any case when it could by any possibility reach an innocent person.

I say to you, gentlemen, who are to represent the policy of this proceeding to the Legislature, I have always held this maxim; and I must confess that I have never felt a more painful surprise than when I heard lately, from persons on whose opinion I have quite implicitly relied, that impeachment is not sufficient to reach this kind of case—and that we would better take the shorter cut of address. I entreat you to confer a moment upon the case, before action.

Let me say a word or two, first upon a narrow ground, and then upon a somewhat broader view of this great question, now for the first time to be presented to the deliberation of this Legislature. I submit to you, Mr. Chairman,—you who have so long and so ably assisted to administer justice in civil and criminal cases—I submit that as a matter of right to the judicial officer, whose commission is sought to be taken from him, the proceedings should be as near an approach as possible to the judicial method of procedure which prevails in all constitutional cases affecting the rights of individuals. Without standing here to moot extreme cases, I conceive that it is sufficient for me to claim, and I have no doubt but that the learned counsel

on the opposite side will concede that the respondent has a sacred right in his office. Whether the commission be property or not, it is a sacred right, inasmuch as it possesses a pecuniary value—inasmuch as he holds it as a proof of his judgment and capacity, and as a means of doing a public service; and inasmuch as, further, to deprive him of it, is to disgrace him; I submit that it is a *quasi* property. And I therefore submit that the forfeiter should be pronounced guilty, by as near an approximation to a judicial procedure as is known to the terms of the Constitution.

I have heard it said there is hope of a tree, if it be cut down, that it may spring up again—that its tender branches may again come forth to produce leaves and bear fruit; but when the reputation of a man is dead, where is he?

I put it to you in the first place, with great confidence and great earnestness, that you are urged to deprive a citizen of a property—and that you should do it, if you should do it at all, by as near an approximation to the forms of a grave and judicial proceeding as the Constitution allows of.

In the next place, there is another reason why we should proceed against this man, and against every man, by the forms of law. And I expect on this also, not only the sanction of the Committee, but also the assent of my learned brother; and that is, as against Mr. Carter, and against every one, it is really a case of the administration of criminal law; and that also, in the universal manner in which criminals are tried—he should be tried *judicially* if he be tried at all. Now I do not mean to say that this power of address, necessarily, is an administration of criminal justice. There may be, and there were expected to be, very

many cases where a judicial officer may be removed by address.

I have no doubt but that this Constitutional provision was intended to apply to the visitation of God—to lunacy, to superannuation, or to some other cause of a similar nature, without inflicting any pain upon the feelings of the party removed. Such an administration, without being an administration of criminal law, might be conducted so as to soothe the feelings of the party. It might be so done as to command his approbation. It might be attended by a very just panegyric for the long and faithful services of an illustrious individual; and when thus administered, as it was undoubtedly intended to be administered, I do not mean to say that it is inappropriate. But when, as in this case, you intend to deprive a person of office, on the ground of a bad reputation, I put it to you that it is, in its intrinsic character, an administration of criminal law. And I do, therefore, submit that upon that ground it ought to be conducted by impeachment, if it can be conducted by impeachment, and by as near an approach to judicial proceeding as the forms of the Constitution will allow.

I submit that it is due to the officer and the man, that it should be so. I submit that it is due to the family, whose hearts must bleed when this is done. I submit that it is due to justice and to example, and for the proper impression upon the community.

Nobody will suppose—you, Mr. Chairman, who know me personally so well—no member of this Committee will suppose that I intend to intimate any disrespect to any of you, when I say that the forms of impeachment are better for the respondent than those of address. No forms are safer than those of impeachment. After a hearing by a Committee, when the impeachment has been voted for by

one branch of the Legislature, another branch of the Legislature is instantly, may I not say it? elevated to a Court of Law; another branch of the Legislature immediately divests itself of its Legislative character, and erects itself into a Court of Justice. The judicial oath is taken—rules of practice—rules of evidence—a code of laws are emerged, and surround the party—a terror to evil doers—a protection to honest men. Counsel are retained on one side and the other. The elaborate discussions of the bar take place. Grave deliberations are held. And in the language of Burke, “that which is irreversible, is made to be slow.”

We therefore gain one further advantage, in asking for Mr. Carter the impeachment. You will see that this affects his property, and his reputation—in the first place touching him in his pocket, and then in his good name. You ought to try him according to *Magna Charta*, and by the Bill of Rights, rather than by this sudden proceeding.

I have heard many persons say that an impeachment takes too much time. It is loading too much of a gun for the game. Gentlemen, that would conduct us instantly to lynching. Suppose a man took a pistol and shot another dead in State street. Why should he not be taken to the Common, and hanged amidst the execrations of a hundred thousand spectators? Because, perhaps he did not think his pistol loaded. Because, perhaps he was insane. Because, perhaps his victim had purposely trod upon his foot—intentionally provoked and insulted him. For the sake of caring for human life—for the sake of turning this into a grave proceeding of State, although no human individual has doubts of his guilt, the counsel challenge the jurors, and plead his cause with eloquent words, and with the judgment of twelve of his peers and a full bench, he takes his chance of escape. I submit that the same judgment

which allows us to give a fellow creature such an opportunity to escape, when he has committed a heinous crime ; should warrant us in furnishing equal justice to an officer whose reputation, dearer than life, is attacked.

And now I may be permitted to say a word or two, as one of your constituents, upon this great question—for the main argument is with more propriety and ability to be developed by my learned associate—the power of the Legislature to remove the Judge by address. “*Sic volo, sic jubeo, stet pro ratione voluntas,*” stands alone, an exception to the independence of the Judiciary. The more I have reflected upon it, the more does this strike me. I suppose that we agree that the one grand peculiarity of our system of government—the one grand fundamental doctrine of constitutional liberty—the great primitive granite foundation of it all, is, that the three great departments of the Government shall be entirely independent each of the other ; and that in a special manner, the Judiciary shall be independent not merely of the crown, but of that power behind the throne, so much greater than the throne, the Legislature. I suppose, sir, there is not the least extravagance in saying that this principle is the one foundation and granite principle upon which our Constitution is built. I suppose that there is no extravagance in saying that the one great principle of English liberty obtained in 1688, was exactly this—that for the first time, it made the English Judge independent of the crown. Let any man refresh his studies of our glorious Literature of Liberty—let him go back to 1780 and 1789, when our Constitutions were debated and adopted—let him read Mr. Adams’ history of the debates in the several conventions, and the papers of Jefferson and Madison, and he will find that these three

great ideas possessed the universal American mind : first, that the three departments of Government should be kept distinct ; secondly, that the Judiciary should be made independent ; and thirdly, while most persons entertained a very unreflecting dread of Executive power, the wisest and best of our fathers anticipated that morbid development of the power of the Legislature, which should thrust down the Judiciary below it.

It is upon that principle, you know very well, Mr. Chairman and Gentlemen, that our own State Constitution has been organized. And I never read without a thrill of sublimity the concluding article of the Bill of Rights, in which it is promulgated.

“In the Government of this Commonwealth, the Legislative department shall never exercise the Executive and Judicial powers, or either of them ; the Executive shall never exercise the Legislative and Judicial powers, or either of them ; the Judicial shall never exercise the Legislative and Executive powers, or either of them : to the end that it may be a Government of laws, and not of men.”

The language is borrowed immediately from Harrington, who says he borrowed from Livy.

I remember a story of a person who said that he could read *Paradise Lost* without its affecting him at all, but that there was a passage at the end of *Newton's Optics*, which made his flesh creep and his hair stand on end. I confess that I never read that article of the Constitution without feeling the same : “to the end that it may be a Government of laws and not of men.”

It must have struck every one with surprise, that in our Constitution there should be found a power authorizing the Legislature, without one particle of notice, to take

the Chief Justice out of his seat in a single hour. It struck me a little as it would those who translated King James' Bible, if the word "not" in the seventh commandment had been omitted as unnecessary.

This power must have been intended only for a few palpable cases—cases of insanity—lunacy—superannuation—or for a few unknown cases, which no human wisdom could foresee, in which, when they come, the universal assent of the community is instantly commanded to the removal—as if the Judge, sir, should, as is stated in the old books of religious devotion, be left to the commission of crime so indisputable, and so transcendant, that the universal community, his friends—himself, if he could be heard to speak, would demand an instant removal. If there remained a particle of doubt, it should not be done—the power of the Legislature should not be used.

Mr. Chairman and Gentlemen, I have somewhat reflected upon the limitations under which this power should be presented. Under these limits, held up thus, and with these restrictions, it may be reconciled, as otherwise it could not be, to the general principles of a great system of Constitutional checks and balances. But the very instant you set an example of going beyond,—permit me to say to you—some of you personal friends—and all of you, whom I entirely respect—you set an example which, probably, is fatal to the Constitution. He whom the providence of God elevates in such a way, that his acts has bad consequences, he is justly deemed responsible ; but the act which his example sets may be much more injurious. You are good men, and live in good times ; but you set an example for bad men in bad times.

It seems to me, then, that it is a duty of very great

importance that this power is not strained and perverted, and I hope that we shall find historically, and according to the spirit of a statesman, and in the terms and language of a statesman, embodied in the report of this Committee, the true doctrine of the limitations of this tremendous power. Let us trace it up—show how it was inadvertently introduced into the Constitution by the framers—show how it is always to be held in subordination to the principles of the Constitution—how there are rare cases to which it may be applied, and thus purge the mind of the Government and of the country of that pernicious and novel generality which seems to me to leave no man any security at all for any thing that he holds, or any thing that he owns. In its nature it is vague—in its nature unfriendly to the independence of the Judiciary—in its nature it leads to a morbid enlargement of Legislative power. I submit that it is your duty to be quite sure that you apply it to no person, and to no thing, in any doubtful case, whether or not it is in the original intention.

If a case be doubtful, I pray your judgment, and I feel no manner of doubt as to the result. If the case be doubtful—whether it applies to the Judge—whether it applies to the description of matter with which he stands charged—if it be doubtful; for God's sake, throw into the scale the great principle of the Constitution—which is the independence of the Judiciary. That great doubt you can not escape.

I submit, Mr. Chairman and Gentlemen, that true policy would advise us to lock up the "extreme medicine" till the attack of the alarming malady. "True wisdom would advise us to place such a power rather in the background," as the great Burke has said, "and to throw over it the well-wrought veil of obscurity, reserving it for the

emergency." The power is here. Let it be preserved. It should be kept in the inmost recesses of the Constitution. Keep it in that dark vault, as in the case of the Gothic king, lighted only by a single candle. Keep it till some great complication arises which it requires a divinity to disentangle. That is a precept of importance.

Leaving these two general considerations—during the presentation of which I had forgotten that I was an advocate, and had recurred to the first principles by which my dreaming manhood was charmed—I submit that this power of removal does not apply to a Justice of the Peace at all. And I suppose that these remarks will not be considered far-fetched when we come to examine the Constitution.

But before turning to the Book of political life, let me propound to the lawyers of this board this rule of interpretation ; the rule is this, that as the power of removing by the Legislature is the exceptional case—not the general rule—as it is confessedly a departure from the general spirit of our system of constitutional checks and balances—as it weakens the Judiciary, and gives a vast expansion to the power of the Legislature ; the Constitution is to be strictly construed—What do you say to that, Mr. Chairman ?—and not to be extended beyond the clear, plain, obvious interpretation of its terms, and some plain signification of its meaning. I stand on that, to the last gasp of my life.

Let us see, Mr. Chairman and Gentlemen ; and I now respectfully ask your attention to an argument somewhat carefully written out, because I could not trust myself to the using of so much of your time as an extemporaneous delivery might occasion, or to presenting in a popular form what I wish to be a close constitutional argument.

In reading the Bill of Rights, we must always begin with MAGNA CHARTA. And I think that a good deal of light in this connection will be thrown upon this clause of the Constitution, if you will allow me to carry you back to the glorious Act of Settlement, in 1688. Our ancestors borrowed their doctrines from that great history of the Constitution of England. We have that history in Hallam, and also detailed by the popular historians. The Act of Settlement of William and Mary made the Judge independent of the king. The article is in these beautiful terms—these are the exact terms :

“That after the said limitation of the crown shall take effect the salaries shall be made, “*Quamdiu se bene gesserint.*” But on the application of both Houses of Parliament, it may be lawful to remove.* The King gave to his faithful Commons an independent Judge. And the Commons too, ingrafted it in the Constitution, that he might be removed.”

Mr. Park, the opposing counsel.—“These are the Judges.”

Mr. Choate.—I rather guess that Judicial officers mean Judges—I should like to see another Judicial officer. “Airs from heaven or blasts from hell,” where is he?

Now, Mr. Chairman, this is the very first appearance of the right, and it comes in there, as it comes in here—a limitation on the tenure for life. “We buy,” as Burke says, “all our blessings of liberty with a price.” Here was a privilege granted to all the Judiciary, but the exception was made to it. There was an independent Judiciary in the term for life. But that independence cost mankind too much. And although, to the Constitutional reasoner,

* Vol. IV. Book IX. Chap. III.

there has come to be nothing so formidable presented, as the power of the Legislature to take the Judge from the bench precisely when the obnoxious law is to be presented to the Judiciary for their consideration ; yet it is necessary that that transcendent tenure, so far above the general analogies of Republican Liberty, should be subject to that one control. But in the case of Justices of the Peace, why should the power be given, when a cheaper substitute can be obtained ? I say then they did not mean to extend it any further.

I do not believe that we should exercise this power, and I apprehend, that before we can come to another conclusion, we shall have to read our history backwards, as the witches were said to have read their Bibles.

There are one or two other considerations. I am here, as a very great Englishman has said, “not with books with the leaves doubled down, to speak for technical principles, nor to defend a client merely, but I stand here on an important and cherished principle of Constitutional Liberty.”

This is the first time of taking up an extraordinary and mystical passage of the Constitution, and putting a construction on it. The other side argues here from analogy. They say, if the great Judge may be taken, the little Judge may be taken of course. The question is, what sort of a power it is that takes great men. I suppose that the Legislature had a great power, because the great Judges had the great tenure.

“Extremum hunc Arethusa mihi concede laborem.”

They do not obtain the power in the first article. They do not obtain it at all. It is not the principle that the little Judge may be taken as well as the great Judge. But it is a bad habit to take any Judge. It is a danger-

ous, debauching power—an exception—a transcendentality, to take any Judge. And he is a wise man and a lover of his country, who can provide a substitute for a power which we are all but too much inclined “to roll as a sweet morsel under the tongue.”

Now, Mr. Chairman, it is perhaps partly from the influences of professional life,—I hope that my brother will agree with me in this—that I feel that the power to remove from this office on a ground like this, is so large—so irresistible by itself—so tempting in its exercise—so potent to enlarge morbidly the sphere of Legislative power, that I can scarcely conceive of a case in which a sober Legislator would permit himself to entertain an application like this. I do say, that such a state of facts, as are here presented as the basis for invoking the action of the Legislature, is in the last degree monstrous.

When you consider, gentlemen, that the Judicial office is in itself intrinsically objectionable—when you consider that the country Magistrate, especially one who, in a divided state of opinion, administers an obnoxious law firmly, is almost necessarily unpopular—when you consider that every man, who is bound over by the Magistrate to keep the peace, for selling liquor, or for other action in opposition to an obnoxious law, becomes his enemy for life—when you consider that this kind of enmity finds out, by a kind of magnetic and electric certainty, everybody that has been offended by his particular action—finds out everybody that has been set aside by his success—when you consider that slander spares neither age nor sex, and that in one of his last letters, George Washington complains that he had been spoken of in terms not inapplicable to a pick-pocket—when you consider how easy it is for an individual

to furnish an excuse to strike an individual's character dead—it is proper that you should pause to find some principle by which this jurisdiction is taken.

When I remember that in spite of horse-guards and other obstacles, the attempt was made to destroy one of the most illustrious of men, in the 80th year of his life—when I remember how many went to their graves believing Junius to be a relentless Scotchman—when I remember that one of my own profession, in a neighboring county, was persecuted by some of my fellow-creatures to the verge of his grave—when I remember (I need not go back so far) how Athens gave the cup of poison to the wisest of men, I need not try to bring to your minds the great, the oppressive, the dangerous power which is given by the Legislature against my client. You give Mr. Withington and his associates power to send for persons and papers. You offer a premium on slander! Scandal is paid for. Grudges, which have slept for twenty years, are unearthed, and borne down on the railroads by cart-loads. And my client's mouth is shut as if he were dead. For what cause is this? He is attacked as if he were barely a fellow-creature, tried for sheep-stealing, with a general ransack of twenty-five years of an active, sometimes unpopular, but, thank God, he has that which can not be destroyed, a useful public and private life. What a result! These are no bad reasons, but excellent reasons for seeking for a rule. You are men of honor. You do not understand that you have jurisdiction over this case. If the magistrate is brought before you, with him you deal. The magistrate can be tried. What, then, is the rule? I entreat you to take it from me, for consideration and adoption. And I put it to the universal manhood of Massachusetts, that it is correct, that if the case before you is such that the magistrate has

performed his official duties with uniform fidelity—if no act of official malversation can be fastened upon him by the utmost intensity of slander and malice, (and if there can be, it is to be the subject of impeachment,)—then clearly, unless the character of the party becomes such that the magistrate, as such, is destroyed—unless the private man kills the Justice of the Peace—unless it becomes such that the sentiment of good and wise men, with a substantial universality is, that he is unfit to be a magistrate—that in his hands the law can not be administered, and the police can not be maintained—that the respect and fear of law is overcome and vanquished by his participation in it—when the private character, in other words, appears to have destroyed the capacity of the Judge, there is no case for you.

Suppose it had been shown here that the good of Lancaster—suppose it had been shown here that the wise and good men of Worcester county, anxious to administer the criminal law, could not bring criminal cases before him—suppose that they had come to feel that he was a man so licentious that there was no certainty what he would do—no certainty that he would not acquit the guilty and condemn the innocent : and that whether he acquitted or convicted, no moral sanction followed ; and that they felt therefore that they could not bring their cases before him, it might be proper to remove him. But on the other hand, before we have offered a particle of testimony, the slanders of three and twenty years of an active life are let loose upon him ; his mouth is shut, instead of making his defense at the bar, a chained and silenced man. And at the end of such an examination as this, there is only a divided sentiment about one phase of his private character. When it appears at the end of such an inquisition that his position

in private life is elevated—that his associates are of the highest character—that he stands unsuspected of vice, of intemperance, of unchastity, of profaneness, of breach of law ; when he stands a scrupulous observer of every propriety and of every ordinance that good men love and respect ; when such an inquisition shows that his good magistracy and fairness are admitted by all but one man—one Mr. Thurston ; when he is the only one of all the Justices of the Peace before whom the temperance men come ; I ask you to consider that when he has had three or four business transactions, and has come out of them, his enemies thinking him dishonest and he thinking them dishonest ; and then there has followed all those bitter, resentful, and malevolent feelings which have been exhibited ; and the result before you, in his own town, is, only a divided opinion in one village, a sentiment against him in another, and a clear sentiment in his favor in a third ; I submit without disrespect towards any of the Committee, that it is just as barbarous, and just as unconstitutional, and just as absurd to say that he should be removed from his position on this account, as to say that because he is not six feet in his shoes, and begins to be decidedly bald on the top of his head, he should be hanged. Exactly ! Exactly !

On the director of the bank—on the deacon of the church—on the guardian of children—on the librarian of a society—you have not the power to lay the weight of your hand. But the Magistrate, as was eloquently said in the other branch of the Legislature [the Senate,] some years ago, “his countenance, you may change and send him away.”

But the trustee of the bank, the guardian, the librarian, the deacon, you can not touch. And unless the

guardian, the librarian, the trustee, and the deacon, have destroyed the Justice of the Peace, you will send him home unscathed. I respectfully submit that that is the true position of the case.

Remember Lord Ashburton, the glory of the bar, who said, "Let us be silent when these illustrious men may speak by the codes which are their monuments, and their unblemished lives." The Legislature should be the last place for slander to be nourished. Private character should be safe there. Leave it to the newspapers, and not to the best ones, either. Expect the best newspapers to stand by private character. Strike the magistrate dead; hold an inquest over him, and lay him out—the magistrate, you may order him to be buried.

And now I come, under this view of the rule, to state exactly what I regard Mr. Carter's case to be. I will extenuate nothing. And I do not believe my brother will expect that "aught should be set down in malice." I deal with the case of a man who may have made mistakes. But I think that the Magistrate should be marked for sterling worth. I could wish that all could stand up and give as good an account as he can on a trial of twenty-two years of life.—Mr. C. then discussed the details of the evidence.

THE CRAFTS CASE.

This was a case where it was alleged that a vessel was cast away on the beach of Cape Cod by the captain, in collusion with her owner, Mr. Crafts, to obtain the insurance. One Wilson was the chief witness for the Government. He turned States' evidence, and swore that there was such a conspiracy. He corroborated it by some signatures of Crafts, which the defense denied were ever signed to such documents. The great object of Mr. Choate's arguments

was to show that Wilson was unreliable and a knave. During the trial he had subjected him to a very long, minute, and severe cross-examination, under which the witness had not appeared well, and which showed his life to have been generally of very doubtful character. The following extracts I wrote down at the time of the argument.

Mr. Choate commenced by reminding the Jury that this defendant was a business man of good character, who now stood in peril of his character, his honor—all. Any of you might be in the same situation. Suspicions are excited from some cause when your ship goes to pieces ; you are examined in preliminary hearings, where not one word is said in defense, but all evidence tending to inculcate is produced ; another Wilson—if the government could find another Wilson—is put upon the stand, declaring himself a villain, and you his comrade in the villainy ; and thus you stand condemned without a hearing.

The presumption of innocence he then alluded to. “It is equal to one good witness,” he said. “It attends this prisoner like a guardian angel.”

The character of the crime was then considered ; so rare, so dangerous in its execution,—to lay the bones of a ship upon a beach in a storm—so liable to detection ; rarer of occurrence even than Treason.

The previous unimpeachable character of the defendant, evidenced by fifty-nine witnesses. The defendant had no earthly motive for such a deed ; the captain had no motive. The charge was sustained, he said, by two parcels of evidence—Wilson, and the papers of Wilson.

Wilson is a discredited witness. But the great law principle, founded on the best experience of humanity, declares, that even when a States’ witness appears most favorably,

still he must be corroborated. Why? Because his story is influenced necessarily by *hope* or *fear*; and in a man's own confession of guilt even, if those motives appear to have been used, the confession is rejected.

Now here is this Wilson skulking about, and lying concealed after the vessel went to pieces, the perspiration bathing his brow at every knock. This agony continued till flesh and blood could stand it no longer. He has every motive to tell a story to the Government, which, by inculcating another, may clear him—as the drowning man struggles for that last plank with his brother, in the mid-ocean, which will hold but one. Having first told this, he must swear to it. The theory of its reception at all is that witness is penitent. But if he be corroborated, no corroboration will render reliable the testimony of a man whose whole life is shown to be so black—to whom cheating and lies have been always familiar—who would have charged the firm of Dame & Raymond with this guilt had he possessed any signature of theirs. If his story were to be believed, no one of us is secure. We must fly each other as from the avenger of blood.

Again, (the advocate said,) he has perjured himself seven times on the stand. You saw it in his manner. Was it grave, contrite, the tears and the truth delivered together? No, nothing of the kind.

Then his matter, also. Was that upon its face like truth?

He gives a mass of *unimportant* truths, but interwoven with the truth, inwoven with the texture, running all through it, is the scarlet tissue of falsehood. It is the drug that poisons the whole cup.

He put a humorous supposition in illustration of a false witness mixing true with false;—If a man among the

audience picked a purse from a pocket among you, (the audience will pardon the supposition,) and to clear himself should offer to swear that he was prompted by a professor of Harvard, he could tell accurately the position of things even to *that oar* upon the wall, Gentlemen of the jury, which hits the Marshal's head ; suspended there in token of our maritime jurisdiction. Every thing *immaterial* would be all right ; every thing *material*, false.

No man or woman born is to be convicted on such evidence. By such testimony the greatest of the heathen fell. By such evidence England and Ireland and France were deluged by the blood of more than one Reign of Terror.

See how convenient his memory is. He tells you this story down to just the point he wishes, then his memory, accurate thus far, breaks down—is suddenly paralyzed ; he can't remember any more ! But these events of which he is speaking are connected *inseparably* by a law of association of ideas ; he *can not* remember one without the other ; any more than he could remember *that he saw one side of Captain Smith and not the other*.

It is a great privilege that the government must *prove* their case—a privilege so ancient and admirable. It is in the Constitution of Massachusetts. It is in the Federal Constitution.

But they bring witnesses who now, knowing that the ship *was* lost, say that, looking at the facts, the observations on the ship, the reckoning, etc., the captain could not honestly have been so deceived as he was, in regard to the actual position of his vessel. And I suppose if the philanthropy of two hemispheres shall find only the grave in which Sir John Franklin's body has warmed a place,

every coxcomb clerk will pass an opinion, judging by *after facts*, and say *precisely* where the error in judgment was. But he was as good a Captain as ever walked between stem and stern ; and I say *he was* deceived, utterly deceived, as to the lay of his craft.

Wilson has told us where he takes his afternoon *conso-lations* (drinks). He has told us his barbarous, his atrocious story. He has contradicted himself again and again. Why don't he pay back the moneys he has ill-got ? He is so much of a villain that he wouldn't if he could, and so much of a bankrupt that he couldn't if he would. From one of his vices, gentlemen, learn all.

The Virtues, like the Graces, grow and go together.

On that alleged birthday of the conspiracy, where was this Captain ? That flag waved over him, from under which, now, thank God, no sailor shall ever be taken more !

Mr. Choate got a great laugh at the expense of Mr. Robert Rantoul, the U. S. District Attorney, while commenting on the hesitancy of Wilson to say how he came to be a State's witness—how he got into communication with the government at all. "My brother Rantoul," said he, "told this rascal what to say." Rantoul sprang to his feet, inquiring if he meant to charge him with instigating the witness to speak falsely ? "No," burst out Choate, "you *told* him, to speak the *truth* ; and I saw you do it !"

Now, this Wilson is wholly uncorroborated and discredited. I brand him a vagabond and a villain. *They brought him to curse, and behold he hath blessed us altogether !*

“And now, Wilson being out of the case, as” (glancing his fiery eyes round upon the stolid witness, who sat near the District Attorney,) “he ought to be out of the Court House,—we will consider what proofs remain to be discussed.

CAPTAIN MARTIN'S CASE. MAY, 1850.

[I have preserved a few of Mr. Choate's opening words in the argument in Captain Martin's case, where he also was indicted for casting away his vessel to obtain the insurance.]

All that this defendant has suffered, gentlemen, is nothing to what follows a conviction ; yet if he could have anticipated the first, he would have prayed to die.

Try this case, not by vulgar and newspaper and street corner talk, but by the *evidence* actually *in*, as you would wish *your* sailor boy son to be tried ; and, my life for his, he goes free. I pledge you my honor, I have no other wish than to try the case on its legal and fair face. The untiring patience, Gentlemen of the jury, you have manifested, I shall rely on to the close.

The presumption of innocence is a witness for the prisoner. It goes with *every parcel* of evidence you examine. It is so with any one, especially with one of the character proved by this man. Far different is the benevolence of the law, from the vulgar recklessness with which *suspicions* are caught at as certainty.

APPLICATION FOR A RAILROAD BETWEEN SOUTH DEDHAM AND BOSTON.

[Extracts from the speech of Honorable Rufus Choate before a Legislative Committee, Boston, March 26, 1850 ; from Phonographic report by Dr. James W. Stone.]

Mr. Chairman and Gentlemen,—I hope I shall be thought guilty of no extravagance when I say so,—we

afford to this Committee and to this Legislature what a great English orator once called in Parliament "a fatal and critical opportunity of glory." A juncture in the industrial and public fortunes and conditions of Massachusetts, has palpably arrived, and is passing away. "There is a tide in the affairs of" State, "which taken at the flood leads on to fortune." It is in your reason and your equity to say if that tide is not at this moment rising fast and strong and soon to be away.

What is exactly the proposition that we bring before you? The general character of the proposal, and the general reason for it, Mr. Chairman and gentlemen, is this. I entreat your attention to a large, and not too large, but only an adequate apprehension of it in its general character, and upon the general reason that it rests upon. It is exactly this; and I mean only to speak the words of truth and soberness in announcing and maintaining it. Its general character is, that it is a work towards the completion of railroads through the county of Norfolk to the Hudson river, to the shores of Lake Erie, a line of six hundred miles, and then to the upper Mississippi, a line of eleven hundred miles. This is the general character of the proposal, and this in a general way is what we respectfully ask your aid to do; that is, to undertake a work intended to complete the railroad communication from Boston to the uncounted wealth of the West, and leading by probable tendency to such completeness; not certainly, sir (nobody pretends to speak so extravagantly); but we ask you to extend your hands from Boston to the waters of the West in furtherance of a plan leading to consummation by *probable* tendency.

To ask you to undertake so magnificent an enterprise

were no doubt a dazzling and a too formidable proposal. But I entreat you to take it with you that the peculiarity of this is, that you are not asked to build the wide arch of the range, but only to insert the keystone ; nay, not so much as that ! not to do that, but only to set off by metes and bounds the right place for the buttress to be laid, on which one end of it may repose for ever.

You, therefore, see by what grand peculiarities it is recommended. We ask you to do, no doubt, an act which is to yield a vast and most incalculable amount of public good, but which will certainly yield a series of minor, and yet great benefits, at every step that we take. We ask you then to take part in a great work undoubtedly, but it is not the building of an edifice, every story of which must be completed to the roof and to the attic, or else all will be useless. It is more like reclaiming a whole country to cultivation, where, if all is not done, every successful acre that is plowed, yields its own peculiar harvest, and insures a certain gain. Such, in a general way, is the nature of the proposal which we bring to the notice of the Committee to-day.

And now, in coming to the consideration of this subject, I believe, sir, that I may spare myself a great deal of trouble by taking it for granted that if what we ask to have done would secure, or would go by probable tendency to secure a railroad free and untrammelled to the shores of the Erie, or to the shores of the Hudson, or only to Bristol itself,—if that which we propose will go by a reasonable and probable tendency to secure this result, and if it is also shown that what we ask is necessary to secure this, and that it will not be had to a reasonable prob-

ability without it, you would grant it as a matter of course.

Of mere area,—let me say in advance,—for a vessel to lie at anchor, you have enough for a thousand years of the empire of trade. And for the ten thousand masts of your improved commerce, I shall ask whether it is not the true policy of your navigating interest, to barter a few acres of their line to render the productions of the West more readily brought to our harbor, to cast, as in the customs of Venice, its treasures into the lap of our undiminished commerce?

I have barely indicated the answer that I mean to give to them, and, I repeat, that with a line of that description—all that can be expected of you is this only. I wish I could take you with the respect that is due from a constituent to his representatives, by the hand, and ask you whether the difficulties you are laboring under are not these. The question is this: will this road contribute by any probable tendency, to a road extending as far as Erie, or even to the Hudson, or even to Bristol? Or will it in a larger consideration assist such a tendency? To these two topics I mean very briefly to address myself.

I do not propose, although this is a dazzling topic, to detain you a moment on a display of the importance of this new railway connection to Erie, and from thence to the West. The prospect is flattering, but it is too easy for us, and too easy and too plain. All that, I take for granted. And instead of indulging me with declamation for two minutes, you desire that I should advance at once to the question, whether or not the little thing that we ask will not reasonably tend to give the connection desired, and whether it is necessary.

It would be of course agreeable to pause for a moment. I should be glad to follow my friend who has been speaking on the wrong side, against the tenor of his whole legislative experience [laughter] ; but as a Massachusetts lawyer and a Massachusetts citizen, speaking to public men on the important connection of this harbor with the uncounted wealth of the West, let us leave that for the Commencement performers (and you and I, Mr. Chairman, remember them a good many years ago), to give their fancy declamations about it. It would be an object for Massachusetts, by the side of which all other industrial objects fade and fail, to open a communication with the West, not to supersede the great Western Railroad,—God forbid that we should come in competition with that!—but along the whole width of crowded and western Connecticut. I thought my learned brother would take the butter out of my mouth. Why, we should give him butter enough to win even his assistance. The great amount of agricultural products ! nobody is even now behind his head to call it in question ; I wish I could raise doubt enough to call that in question of which my heart is full. [Sensation.] Strange indeed if in this State House, in this Senate Chamber, among these immortal records of this policy in this behalf—here in this Senate Chamber, where the sobriety and wisdom of Massachusetts have for so many years declared, by a series of public and practical actions, that what the industrial interests of Massachusetts demand as the indispensable coadjutor of her progress, demand and prescribe, is the most multiplied and easy connection with the West—strange indeed if that should be refused. Those interests demand and prescribe that she must have an interior, or stop short of her manifest destiny ! and as nature has not given her a water power, and as her art must build it,

it would be strange indeed if upon this floor, by this Legislature, a proposal to add another tie between the East and the West should be heard with disfavor, or any thing but the most anxious and solicitous desire on the part of the lawgivers to forward and assist it by every means in their power.

It is not a dream of enthusiasm. And let me remind you there is but one more tie to be made. For such ties we go, as the settled policy of this State, as a matter of course. Timidity may doubt. Procrastination may think it is too early. Simplicity may lift up its hands and say it is too good to be true. Credulity may shrug shoulders and lift eyebrows at the vastness of the idea ; but it is too late to tell the Statesmen of Massachusetts that any thing is beyond her means, or energy, or daring, for the sake of her recognized interests. We stand here in behalf of instrumentalities for her benefit. There can be no running a parallel of contrast between these connections on account of distance ; as if a hundred thousand accommodations did not make up for the difference in distance.

I can only attribute the argument of the learned gentleman,—prompted I know not by what, except by his salary, and I hope it is quite ample, [laughter,]—to the necessity of his case.

“*Nitor in adversum*”—contention with difficulties—is the motto of our State.

If, therefore, Mr. Chairman,—if you will pardon me for having detained you so long, I promise you that I will not detain you half as long on any subject which is half so easy and half so showy as this—if there is any road presented, do not hold us to a demonstration. No good policy is presented, which can be positively demonstrated to you, who

hold the administration of this State to-day. And if there is presented to a Massachusetts Legislature an immediate connection with the heart of the upper valley of the West, it will be appreciated by you, that it deserves the greatest solicitude and the highest favor ; and I feel that you will be in no degree in danger of being turned aside by my brother's subterranean road, five feet under the marshes ; I shall not fear that you will be turned aside either by epicureanism or by philosophy—falsely so called—from looking it full in the face. Will you look at it with the same degree of care with which the Roman Senate used to receive and act on, for so many hundred years, every proposal, every chance, every pretext of annexing to her domains another province, wherever it offered itself, in Persia, or in Britain ? A long, deep policy, transmitted from generation to generation, according to maxims, durable in her case, but not founded, as in this instance, or an innocent wisdom !

Now, sir, we offer you a railroad of this character, and it is not by a few phrases about magnificence, that we are to be driven from it. It was not by such phrases that the Western Railroad was built or prevented. We offer you, in its largest form, a new communication. In its grandest form it is every thing that I have stated. What is this that is too big for our grasp ? It sets off from the waters of this harbor, from the foot of Summer street in this city. If we are not to bridge the waters of that harbor, it sets off from South Boston. In three miles it reaches a line of railroad which is chartered this day to Chicago, eleven hundred and fifty miles, from whence it is attached by canal to the Upper Mississippi. It crosses thousands of miles of other railroads, eleven hundred and forty-one miles of which are in operation ; canals, a great many ; rivers,

more than I can number, none of them on this side of what I may call our own Hudson. It traverses Connecticut and the rich counties of New York, takes in some of the counties of Pennsylvania, stretches along the shore of the lakes, connects with the valley of the Ohio, and when it has arrived at Chicago by the lake, the canal and the Illinois, it is in the center of the West, and the shaft has reached the bottom of the mine of virgin coal.

Three miles of new charter, fourteen miles of new road, are all that we ask. We build it ourselves. There are circumstances at work, which, by a probable tendency, ensure its completion. We can guarantee for nothing beyond this. We are victims of a great error, if we are refused. But if the charter and the road will produce this result naturally, we ask you to grant them.

Thus far I consider myself to have done nothing but repeat the merest commonplace in the world. And I have only to beg your pardon for the time taken, and to advance to the real question in this case, and that is this: Will the establishment of the road from Thompson to come to Boston, contribute appreciably and probably to this or any important part of this series of public good? That is the whole question. Will it probably do so much towards it that the little we ask of you in order to effect it ought for a moment to be withheld?

Now, gentlemen, I submit, first, (for we now come to that which is debatable, and that which is decisive if we maintain it,) that the road from Erie to the Hudson will be probably completed within eighteen months. The flood will be running this way within eighteen months. The road from Erie to the Hudson is no dream of an enthusiast; he is the wisest man and that is the wisest State,

which shall be that day with its "lamps trimmed, burning, and full of oil," to meet it. Mr. Chairman, "hear me for my cause" on this subject. They go about the streets to say this is a dream, but many ignoramuses don't know. It is a great way off. They don't know as there is such a place as Dunkirk. Not being charged with a great and solemn duty, they do not know and they do not investigate.

Now, sir, *probability* is all that we can be required to furnish. Of that there is certainly enough, and so much we do clearly lay before you.

And now I have most earnestly to request your attention to a proof of the detail. Here the probabilities are to guide us. I respectfully, as one of your constituents, hold you up probabilities. If I can show a probable case, I believe that I charge you with a duty; or rather I have the infinite pleasure of laying before you an opportunity of wearing a high official honor.

The earth has bubbles as the water has. As soon as that plan of the Air Line Railroad had subsided, Hartford resumed the purpose of putting out her arm, and from that time to this, its government conducted every single step with a strict reference to the Erie road on the one side, and the Boston terminus on the other. Hartford set to work, raised \$120,000 of money, put out one of her hands east, and another fifty miles west towards the Hudson. And there she stands, "*ulterioris ripæ amore*," as we have it in the sixth book of the *Æneid*, and asks you to take her to your arms.

Such are the arguments, such the grounds, and such the efforts. That it is not dead this day, you know from the testimony before you. A soberer project than this line,

the sobriety of Connecticut herself need not and could not demand. Such is the judgment of all that it is practicable, expedient, and sure to be built ; and I feel that I should be only sacrificing the interests of my clients to a weak regard to my own disposition not to be tedious to you, if I did not pause till the candles come, in order to read the precise details to prove that if you give Connecticut the lift of your finger, the kind gift of an independent breath, and above all, the priceless gift of the deep water at last, she will as surely give you a railroad to the West as the sun that has just gone down will rise to-morrow. I will wait a few moments for the lights. (*Intermission.*)

To enforce the cause of my clients I have been somewhat tediously illustrating this public sentiment in Connecticut, because it will be likely to be permanent. I have said that it is sober and practical ; and such was the judgment of the best witnesses in that connection, independent of any thing going to the West. There can be no doubt, whatever may be said, of the Lackawanna and other Pennsylvania coal brought over that road—there can be no doubt, that she herself will have her coal brought over this road, certainly as far as Hartford.

But to argue in detail, is only enfeebling the subject itself. Sir, for the very reason that where land and deep water meet, and a transit is thereby effected ; for the reason that such a place becomes a great City, the necessity of such connection is clearly proved. The closer the railroad terminus comes to the water, the better. Where have the great Cities of the world been built ? Always at some point where the labors and the travels of the land meet the labors and the travels of the sea. Wherever there is a spot at which the caravan, or the river, the steamboat, or the

baggage wagon, or the locomotive, can bring the productions of the land and deliver them to the carrier of the sea, or wherever the carrier of the sea can bring the productions of distant lands to the locomotive, or to the other means of inland communications, there ever is a great commercial city. New Orleans marks such a contact as this ; New York another. Others are exhibited in ancient Tyre, and Alexandria, and Carthage ; where the caravan came to the waters of their great inland sea. London and Venice, and Liverpool mark other instances of such a connection. The closer the contact of the land is to the carrier of the sea, the better for them ; the less the cost of transportation, the less is spent in lading and unlading, the less damage is effected in carriages burthened by freight and burthened by delay, and the better for them all. I feel, sir, that I ought to apologize for pressing such a topic as this on the Committee. But really, when I consider that I am doing what I can in advancing the last great link with the West, I do not think I am doing too much.

I have come now to one element of alleged evil, and only one, on which I think this Legislature should pause a moment. And I do not deny that we should all pause on that one element. And let it be examined carefully. I refer to the alleged damage done to the harbor of Boston. This is a topic of vast importance and demanding your best thoughts. Tried by that light, and in that way, I submit that it does not present the slightest possible objection in the way of our undertaking. Now, sir, on the general subject of the importance of our harbor, it is not necessary for me to say a word. This topic is elementary, and we are all of one mind. But when, on the other hand, when starting with the universal concession of the importance of pre-

serving the harbor, they come to argue that not the slightest displacement of the water is to be made for any cause, then I submit that it becomes simply absurd and extravagant ; and conducts, like all generalities, to no conclusion at all. To all such conclusions, I submit that the best answer is the past policy of the State. What are harbors ever so spacious without an interior country, whose treasures may come to mingle with the treasures of the seas ? What were Alexandria or Tyre without their commerce ? The true interests of commerce prescribe that a natural or an artificial river should pour its treasures into her lap. It may be necessary to exchange so much of the space occupied by the spiles in the river, for the tonnage which that railroad may contribute to the business of the harbor.

The truth is, and I hasten on, obviously, that instead of indulging in any general declamation on the subject of the harbor,—and I do not mean to say that general declamation has been uttered here,—instead of indulging in any vain rhetoric, we are to deal with cases as they come along (that has been the past policy of the State), to see what the proposed work will do to check currents, to shoal water, to abridge the area ; and then say, on the other hand, what it may do to compensate by the blessings which it brings and by the burthens which it removes. We have been in the habit of trying every case as it comes along. And how fortunate that policy has been, the past and the present of our Boston sufficiently exhibits.

In one of the reports of the Commissioners, they advert to the depth of water at certain points in our harbor in the year 1761, and go to compare it with the present depth of water. Now that retrospect is not important. Sir, there is not a single scrap of proof, nor the least reason to suppose that the whole body of railroad displacement has pro-

duced one single particle of this general alleged diminished depth of water. In the second place, if they had contributed in some slight degree, it don't follow that our policy has not been one of fortunate wisdom in its general details. Sir, what was the harbor of Boston of 1761 to that of to-day? That was the year that James Otis made his great speech. What were the navigation and commerce of that Boston to the Boston of 1850? If it be true that the railroads have contributed to shoal the water and abridge the area, yet if they have contributed to swell the population from 16,000 to more than 100,000, its area from 1,000 to 10,000 acres, and the tonnage of the vessels from I know not what minimum to I know not what maximum; if the citizens have found it of bricks, as the Romans did an ancient city, and left it of marble,—of what consequence is it? Though the water be a little shoaler, yet the trade is ten thousand to one. Instead of a little African trade (*and I wish the whole continent was sunk in the sea before we had ever dipped our hands in that trade*), we have, at the present time, a commerce extending throughout two hemispheres.

After having conducted the policy of improvements in the harbor on so large a scale and with such happy results, that the State all at once should commence a refusal of this road, attended as it is with the promise of so much good, brings to our minds the old nursery story of the giant that swallowed half a dozen windmills, and then was choked to death with a pound of butter.

But, Gentlemen, I hasten to take leave of you. You have heard us most patiently, and I trust you will decide wisely. It is somewhat more than four and twenty years since I last sat in one of the seats you now occupy, performing, accord-

ing to my mediocrity, my share also of the service of the State in this department. Since that, occupations and the flight of time have impaired whatever little ability I once had, as well as diminished the taste I once felt for this species of public exertion, and have removed any inclination to return to it to-day. Yet I can scarcely contemplate, without something like envy, without at least a conscious wish that I could share in it, the opportunity you have to connect your names here and thus with such a service to the State as this. All our other great works of this kind are done. The East is ours by a double line of connection. All that was to be accomplished towards attracting to ourselves the Canadas and the north of New England, has been accomplished.

One splendid effort has been made to lay hold of the West and North-west. One more may be undertaken, and there is no more afterwards to be made. Sir, if the East, if Maine, if that large but desert territory away up under the North Star, her coast iron bound, her soil sterile, her winters cold—if Maine needs two ocean communications, do you think that the Great West will not pay for two only? Yet two are all that can be considered practicable. And the last of these two is to be accomplished by you or not at all. These are the opportunities that make me regret my want of participation in public life.

"Non equidem invideo, miror magis."

You remember that passage in which a great English Statesman, on the verge of the grave, so pertinently expressed himself, that he "would not give a peck of refuse wheat for all that there is of fame or honor in this world." That sentiment may be a true one. But to connect ourselves with an act of public utility, to do an act that shall

stand out clear and distinct among all the aggregate of acts that have made Massachusetts what she has become, to rivet one more chain that shall bind the East to the free Northwest for ever, to contribute to a policy that shall make it quite certain that if the great Central Constellation is to be placed over the sky, New England shall claim its share in the brightness—this is worth far more than all for which ambition has ever sighed ; and this, Mr. Chairman and Gentlemen, is permitted to-day to you.

THE GILLESPIE CASE.

The Commonwealth vs. Rev. John B. Gillespie.

This was an indictment for an assault of an aggravated character. The defendant being a Roman Catholic priest, and tried by a Protestant jury, the difficulties of the defense were very great ; especially as the jury was composed of men by no means above prejudices. It was most strenuously contested, and resulted in a sort of drawn game.

I took down much of Mr. Choate's argument for the defendant ; and from my own manuscript and the report which appeared in the newspapers, the following extracts are collated.

I know that Mr. Choate felt that for a Roman Catholic priest very little justice was to be expected then and there. But he was never more eloquent, persuasive, and pathetic than I then saw him in this—as one of the newspapers called it—great Appeal. Mr. Choate rose and addressed the jury as follows :

May it please your Honor and Gentlemen of the Jury—Whatever we may severally think upon other parts of this case, we shall undoubtedly agree to the entire truth of this observation, at least : that for the reverend defendant this

is a case in the highest degree important in every view which can be taken of it. He is a clergyman, not of your church, nor of mine, but he is in orders. He belongs to a denomination of Christians who, we all gratefully and cordially admit, have long lived among us, demeaning themselves peaceably under the law. It is his duty to be a teacher of purity, benevolence, and peace, to be a light and guide to those around him, and to see that his life shall be a daily and beautiful example to all within the reach of his influence. On the night in question, he had just left a circle of clergymen, quite at the head of his own denomination in its literary, theological, and parochial institutions; and was on his way at that hour to administer the last rites of Christianity at the bed side of the dangerously sick. If in such circumstances, and under such influences, clad in sacred vestments, bound by every obligation that could press on a man's sense of duty, or awaken him to his larger interests, and almost in the very act of performing what he would necessarily deem a most sacred and responsible service; if he then, possessed at the instant by some demon of lust and wrath, without the temptation,—if a temptation can be imagined,—of the thousandth part of a second, perpetrated such a scandalous, incomprehensible, incredible and ridiculous assault and insult upon a woman in the very arms, if not of her husband, certainly of an affectionate protector, as it is not necessary for me further to describe—if he followed this up by a series of acts of brutality, first attacking the husband and next the guardians of the public peace, then he is, and of right ought to be, ruined, and that for ever—be summarily unfrocked and unmasked. This community will no longer bear his presence as a teacher among them, and the church to which he belongs, as prudent as she is devout, will in-

stantaneously cast him in disgrace from out her limits. How much do you hold in your charge? Not his life, but every thing that makes the value of his life. You are called upon to judge him soberly, fairly, candidly, justly and according to law.

If he is innocent—if the presumption of the law that he is so—and which, till he shall be proved otherwise, should be as irresistible as the heavens—if that be true in this case, then I have seen no client and no man in my whole professional life—now not short—so truly deserving of the deepest sympathy and the most heartfelt compassion of a jury. If that be so, then he has been the greatest sufferer—sparing his life—I have yet seen. If the story which he tells now, and has always told from the beginning, be true; if coming from the agreeable and improving society of brothers and fathers who loved him and who love him still, going to make a sick call on one dangerously ill; if perhaps already marked as the victim of that terrible complaint of the lungs, and being carefully muffled, he is seeking to improve his spirits and his health by the enjoyment of that blessed and refining autumnal evening, yet knowing he shall be in season for the performance of his duty, walking rapidly, his mind abstracted and engaged in such contemplations as would be expected of such a man as you are told he is, under such circumstances; his cap drawn down over his eyes, so that Mrs. Towle could not see his face as she tells you, walking on a narrow sidewalk, at that spot three and a half feet wide, making a deflection to avoid those steps which his eye caught as he reached them; if he then accidentally came in contact with the wife of Mr. Towle; if the accident was misunderstood; the wife misconstrued it; the husband did not see it; if the hus-

band, adopting his wife's impressions, reproached and abused him, as I do not blame Towle if he did, upon this misconception ; if he promptly denied any insult, and assured them it was all an utter mistake ; if Towle then rudely pressed upon him and refused to receive his explanation ; if he then contracted a suspicion, judging from the way they were walking, and from the style in which he, innocent as he knew himself, was addressed, that they were no better than they should be ; if he then said she was no lady, or no wife ; thus stung by abuse, and off his guard at the moment of so unexpected a charge, if he then said that only word which I regret in the case ; if a violent blow immediately followed it, and perhaps another at the same instant ; he fell from the sidewalk, or was hurled across the street ; if Towle called out "stop the rascal, he has insulted my wife," and he, as he was reaching the opposite sidewalk, was met by those three young men, with feet like those of elephants, and fists like the paws of lions, knocked back again into the street, prostrate, and was then assailed by those unmanly kicks, such kicks and blows with fists or feet as you, Mr. Foreman, or any of you Gentlemen, would not undergo, nor have any friend you love undergo for moneys numbered ; if escaped from this ordeal, and running for his life almost, bathed in his own blood, confused and excited, he is collared by the watchman, carried to the watch-house and the jail, and left to pass the night there without the refreshment of the cup of water never denied to the condemned criminal ; he is carried the next day to the Police Court, and there the ten thousand arrows of ten thousand libels are instantly launched at him ; libels agonizing enough to any man, a thousand times more so to a clergyman, and he comparatively a stranger ; if with all

this he is innocent, I have known no case demanding warmer or sadder sympathies than this.

One fault he may have committed, as I judge the evidence—not from himself—one imprudence, not affecting his character for modesty certainly, and that was, that when stung by the harsh treatment he had received, all undeservedly, as he at least knew well, and judging by what he then saw of the parties that they were no better than they were bound to be, he may have expressed a doubt whether Mrs. Towle was a lady or a wife ; that is the only thing for which he, at the close of this trial, as a Christian and a teacher of Christian love, will have to take Mr. Towle by the hand and ask his forgiveness. If this be so, if this doubt was expressed, how ample the expiation !

You are to try Mr. Gillespie like Christian men,—and the first principle to which I must call your attention is one which you have often heard much better stated and more ably enforced than I can state or enforce it—that the law presumes every man to be innocent of every charge like this till the contrary is clearly and beyond a reasonable uncertainty proved.

It was never more important than here that that principle should be borne in mind, first, and middle, and last. The law presumes this man to be perfectly innocent—it presumes that on that eventful night, to him, his head was clear of every drop of intoxicating drink, that good emotions—emotions of purity and benevolence, and not of violence and lust, were in his heart—and so far as it reasonably can do so, that the witnesses against him were mistaken.

And permit me to say this presumption of the law is not a mere phrase without meaning. It is in the nature of evidence for the defendant, and therefore the government

are bound to make out a perfectly clear and undoubted case of guilt. And unless the government have done something more than to bring witnesses who contradict themselves and each other, you are not at liberty, if you could, to find my client guilty of this senseless, nonsensical, motiveless, and most incomprehensible folly and wickedness.

I do not fear that the manliness of this jury will think that I am afraid of the effect of the testimony, because I insist upon this principle, which may yet be the only security of your lives, gentlemen, or of mine.

We call the highest ornaments of the Catholic church in this vicinity—some Protestants of excellent standing,—some of his fellow collegians—those who know him the most intimately—physicians who have attended with him, for a considerable period, the bed sides of the sick and the dying. If you are to try the case by proof, we give you, as to the point of character, as much evidence and as reliable as could be produced by the beloved and revered pastor on whose ministrations any of you attend—if we are not the victims of a degree of perjury of which I have no conception. The defendant here is a man of collegiate education, refined in sentiment, peaceable, deferential, and reserved in the society of females, and in all respects the very opposite of the licentious, coarse, and *rowdyish* loafer who could have committed this act. I need not tell you, that in a case of this kind, the character of the accused is entitled to very great consideration.

This man, thus pure and peaceable, was on his way to perform one of the most sacred, one of the most refining and improving offices of his religion. He was going to make a sick call. The physician has told you that the patient had a very formidable hæmorrhage, was very weak, not in a condition immediately dangerous, but still it was

not clear that before morning she would not first have required and then have passed beyond the last services of her church. Mrs. Reed called him ; in a congregation of five or six thousand persons, his duties would be of course very numerous ; he was told how the patient was ; he received it as a call to be made during the night, but considered it not improper that before making it he should take that walk to Charlestown with Dr. Early, because, as he said, he thought his health required it, nor that, with the same object, he should extend his walk out of the immediate direction towards the home of the patient. Then it appears by the testimony of three witnesses, Mr. Caverny, Mr. Linden, and Dr. Early, he arose rather hurriedly, put on his muffler, turned up the collar of his coat, and set out, to attend, as he said, that sick bed. If we are not going to believe his conduct absurd, that was his object. The learned counsel says he was out of his course. He can not speak for himself. The law speaks for him, and says his being out of his course is consistent with innocence. We have strengthened that presumption a little.

Perhaps I may have overstated this consideration. But I have been sick, and have seen those sick whom I loved, and it seems to me that a clergyman on an errand of mercy and charity to the sick, is privileged above the common walk ; that he is quite in the gates of heaven. They may become callous ; I do not believe it. I think rather that what in us is merely instinctive susceptibility in individual cases, becomes with them a good habit.

I shall not believe that a man on such an errand, pure and modest from his mother's arms, and who has never been heard by men who have walked the streets with him, in friendly intimacy, by day and by night, to breathe an impure word, or an indelicate allusion even, can have

lapsed into such beastliness all at once. I have heard my share of stories about clergymen of all denominations. Take this human creature—proved, as far as such a thing can be proved, to be of pure and blameless life—and what does he do? My brother talks of temptation. *What temptation?* I can understand the influence of a long-continued course of severe temptation. The brightest and the fairest of mortals have fallen under that. I can understand, too, that a soldier at the storming of a city—a sailor fresh from a long voyage, fiery from enforced temperance, and half drunk, may be suddenly tempted to commit seduction or a rape. But in the name of decorum and propriety, what is charged here! Was any thing more incomprehensible ever imputed to man? What temptation could beset my client in these circumstances? What part of his nature could here meet its accustomed food? Is he a raw boy, making his first essay in rowdyism, anxious to show the world that he does not care whether his mother knows he is out or not, and ready to commit any absurdity for the sake of what he terms fun? He is a clergyman in the middle age of life. What can he gain by such a foolishness? Was not a fight inevitable? Was he not peaceably inclined? Has any man a mark of a thousandth part the size of a pin's head to show from the effects of his violence? And would this be so, if a man armed with such a cane had been then and there in a fighting frame of mind? Was not the street broad and light with the brightness of a clear, full moon? That such a man should commit such an indecency, under such circumstances, is without precedent—is not to be believed upon any evidence.

Mr. Choate then entered into a very critical discussion of all the details of the evidence, showing the contradictions of the witnesses, etc.

Speaking of two of the witnesses, he said :—

But these witnesses appear upon the stand. It is the privilege of the accused *to see* the witnesses, and I submit that they do not bear that peculiar, indescribable, but always obvious and plain appearance of respectability which we claim.

From their own evidence, one was excited. I hope it's the first glass of whisky punch she ever took. If so, it would have excited her the more. If not so, it is a *habit* with her. Either way, she was not in a state to see clearly or report clearly.

And they have contradicted themselves four times—not willfully, I hope.

So much for the Government's burthen and the way they sustain it.

Now we have positive testimony inconsistent with this indecency.

By God's Providence we produce three witnesses (naming them) who saw the whole—whose attention was fixed, and whose power of observation and opportunity were perfect.

It was in this case, that seeing a juror look stubbornly hostile, Mr. Choate marched up to him, and doubling his fist, thundered out, "I have the utmost confidence that I can satisfy you on this, as well as on every other point of the case ; lend me your ear !"

Speaking of the beginning of the alleged assault, he said :—"It was a mere accidental push ; such a mere jostle, Mr. Foreman, as you might give another, in coming out of a Union Meeting at Fanueil Hall" (he knew the Foreman was a Webster Whig) ; "or a Friday evening

Prayer meeting" (looking at another and very religious juror) ; "or a Jenny Lind Concert ;" (looking now at still another juror, who was a musical man.)

Speaking of the watchman's testimony, he said :—I always fear and shudder when I see a watchman swearing to a conversation. A conversation is so almost incapable of being reported accurately. The change of an emphasis, a word, or even a letter, may so mutilate the whole intent. But a watchman's business brings him only in contact with the harsher side of life, and his judgment *must* be severe.

He concluded his argument thus :—

If the evidence appears to you unmanageably contradictory, it is your duty to lay the contradictory evidence entirely out of view, and to form your judgment upon the grand probabilities afforded by the nature of man, the previous good reputation of the defendant, the utter absence of any conceivable motive to the commission of the acts alleged, and the presence of the most controlling inducements to a contrary course. I ask you thus to desert what is not evidence because it is not certain, and turn your attention to that which is certain—the known nature of man.

Gentlemen, the defendant worships God as from his infancy he has been taught to do, according to the dictates of his own conscience, and not to those of yours or mine. I have not adverted to this subject, because it would have been entirely out of place for me to do so. This is a court of law. You are here to judge your fellow-creature,—not of meats and drinks, of ordinances, of new moons and Sabbaths,—you are to judge whether he has violated the law. The Constitution says, in the Bill of Rights, that "all religious sects and denominations, demeaning themselves peaceably and as good citizens of the Commonwealth, shall

be equally under the protection of law." Gentlemen, before you can find a verdict for the government, you must be sure that this defendant, moved by some inscrutable and incredible influence, like a demoniac possession, has committed this infamy. I do not appeal to your prejudices, for you have none,—sitting where you sit, you are bound to have none; nor to your sympathies, for this is no place for them,—but I appeal to your reason and your oaths.

WOODBURY VS. ALLEN.

This was a Patent case, in which Choate was for plaintiff patentee.

I made, as follows, notes upon it, as I heard the argument: He opened by the remark:

Gentlemen of the jury, never in the whole course of my life have I risen under such disadvantage: a long, able argument preceding, a subject originally dry, now threadbare; and I must pursue the old treadmill round with you once more.

As the opposite counsel, Mr. Whiting, had cautioned the jury against the *oration* which he predicted Mr. Choate would make, he disclaimed it altogether; but in the very disclaimer burst out into a climax upon the obligation and dependence upon inventors, of the gigantic resources of America.

Subsequently he appealed to the enthusiasm of the jurymen (having shown his client to be the only recognized *patentee* under the *broad seal* of the United States), by describing Whitney—the man who gave cotton to the South, who qualified her whole history, etc.—yet dying

broken-hearted ! and Fulton, who gave her great lakes to America, living in *distress* !

He said of a witness, whom everybody saw to be weak, and whom he was expected to attack, “ Well, I’ll let him pass, he is not necessary to be demolished for our case ;” and then talked for fifteen minutes about it, and contrived, before he dropped him, to slide in every thing which could be said against him—riddling him fore and aft.

I was struck, in this argument, by noticing how continually Mr. Choate applied the maxim of Demosthenes—to interrupt his regular and prepared flow, by exclamations, interrogations, sneers, etc.

He constantly, absolutely *solicits* the attention and indulgence of the jury : “ As you have permitted me to read the introduction, suffer me to analyze the close of this patent, given by the Government, and stamped by its broad seal.”

All local prejudices, and sectionalisms, and peculiarities, and traits, he catches at. He paid, in his argument on the cotton gin, a beautiful tribute to Whitney :

The man who for a long time was hooted round the courts of his country ; who deserved statues, and whose name now is a spell in the patent world, startling like the title of the Constitution ! And I see on this Patent, taking up the ample parchment in his hand, the name and style of John C. Calhoun, whose name calls up all that is strong and sectional in the spirit of the South.

Again he said : He is a Yankee boy, with the blood of Carver coursing in his veins.

In this argument he ventured a singular gesture—doubling his fist, and shaking his arm perpendicularly above and around his head in the frenzy of his passion, he

said, "this other patent here is of no more value than the red ribbons that bind its parchment."

The oppsite counsel earnestly objected to his reading from a law book. Well, said he, I aint reading it yet. (Laugh.) I might read it—I wont read it. My brother objects to law—he don't want law. (Laugh.) Improper to read it! *Nonsense ; done every day.* However, I wont read it, but *I'll state the whole of it as a part of my argument.* (Great laughter.)

"They come here to show their inventions, with no more inventive brains, as my Lord Coke says, than they have souls." (Great laugh, in which the judge heartily joins.)

In an interlocutory discussion of the admission of a deposition, he said :—

Better that the Court House be passed over by the plowshare than that law should be administered on such principles.

Heaven and earth shall pass away before this grand rule of understanding man shall vibrate.

Such are the canons of evidence ; that the party shall look upon the witness, to see his manner ; whether our law be administered by Priest or Chancellor, in a Court House or beneath an old English oak.

Again, in the argument, he said :—

Try this with fairness. Try it with the bandage over the eyes. Bury the hatchet ; honor bright !

His favorite device of *conceding* the point, and then in some other way, or subsequent connection, bringing it in again, was adroitly displayed in two things. The Court stopped him in presenting a specification of claim of the

other party, as a *confession*. After a severe, but courteous argument with the Judge, he said, "Well, I wont press it, if your Honor don't approve;" but subsequently he contrived to bring it all *arguendo* before the jury, without formally taking up the specification, in hand.

Again—as Mr. Whiting had in the outset cautioned the jury against an appeal for inventors, he disclaimed it altogether in the exordium; but in *the peroration* it all appeared.

SPEECH OF MR. CHOATE BEFORE LEGISLATIVE COMMITTEE.

[Petition to set off three wards from the City of Roxbury, as a separate Agricultural Town.]

I think, gentlemen, that it must be admitted by all of you, at least, by all the members of the Legislature, although my learned brother has been pleased to take a somewhat different view of the case, that the general character of the petition which is presented to you, the grounds on which it proceeds, the objects it aims at, and the source it comes from, are such as entitle it, at least, to the kindest and most parental consideration of the Legislature.

The petitioners are here, Gentlemen, if you will give me leave to remind you, not seeking for railroad charters, or mutual insurance charters, or for the loan of money or of credit from the State; but I hope I shall provoke no man's smile when I say, seeking for a better liberty under the law. They are here with no revolutionary purpose, to throw off all social ties; but asking only the inestimable privilege of being allowed to form with one another sweeter civil and social ties, to the end that they may the better perform all

social and all civil duties. They are not here seeking the lion's share, or any share of the pauper tax, or of any of the cemeteries to disturb the repose of the dead ; but are seeking only a better and a completer government of themselves.

They are here, not from any fear of any future tax from any foreign or a native pauper population, not from any fear of any thing ; but they are here under a present and practical feeling, gentlemen, that a community in lower Roxbury, of native citizens, undoubtedly respectable in its general constitution, of very great worth in its general character, but a community distinct from themselves, distinct by local position, distinct by industrial pursuits, distinct by modes of municipal life, distinct somewhat by sympathies alienated, I will not say soured—a strong feeling that such a community should have a distinct government from their own. I say that this community is this day their master. Good government, or bad government, as my learned brother chooses to represent it, it is the government of another ; and my clients seek to escape from it, Mr. Chairman and Gentlemen, not by rushing into any revolutionary form of policy, but by setting up that old and endeared form which, beginning at the Rock, beginning on the Cape, transplanted from the cabin of the Mayflower, a New England man takes with him as he takes his Bible or his Constitution, whether he ascends the waters of the Mississippi or of the Columbia—that ancient form beneath which alone the agricultural mind breathes freely and trains itself perfectly to the duties of citizenship ; I mean the old-fashioned form of town government in town meeting. These are the general features of the causes which bring the town of Roxbury here to-day. I am quite sure, in advance, that such a case

from such a source, proceeding on such grounds, and reaching to such results, will be treated as all are treated who come to you, parentally, considerately and kindly.

It has seemed to me, give me leave to say, and I have felt it with great force during my learned brother's argument, that it is all but indispensable, before we take one single step towards an attempt to determine this case, that we should begin, if we can, by doing what my learned friends on the other side have not lifted a finger to try to do ; and that is, if possible, to settle some standard, some rule, some formula, some criterion, if language is equal to it, to determine whether a petitioning population, seeking to be a town by themselves, have made out a right to be a town. What shall be the standard of determination, Mr. Chairman ? I submit to you and to your associates that your minds struggle for a rule. What shall it be ?

Now, it is very easy indeed—examples enough have been given this afternoon—for us to fill our mouths with phrases which seem to mean something, and which do mean something, but which do not throw a ray of light upon this question which is so important.

I have the honor, with a good deal of diffidence, but after a good deal of reflection, and at last with a good deal of reasonable reliance that it will not be unsatisfactory in the judgment of the Committee, to state that the formula for such a standard, or the criterion under the policy of Massachusetts, is substantially this : When the area and its inhabitants seeking separation from another town or city, and an incorporation as a new one, are sufficiently large and numerous to constitute of themselves a new town of respectable dimensions, and population and ability, above the average of the towns of the commonwealth—

above the class of what would be called inconsiderable and unimportant, or small towns, and yet leave the parent town not absorbed by annexation, with which these petitioners have nothing to do, but will leave it in a municipal life of average dimensions, populousness and ability ; then if the public policy shall in this behalf be satisfactory, I mean to say, not the making of two inconsiderable towns, but of two large ones, which shall be above the average ; then, sir, if the welfare of petitioners who apply for the incorporation will be promoted in a considerable and appreciable degree by a separation—so much promoted that this will exceed the inconvenience and evil, if any, occasioned to the residue, so that upon the whole there will be an increase of the accommodations and convenience and probable prosperity of the original whole as a mass, the separation is proper to be made. I pray you to allow me by this fading twilight to pause for a moment upon this criterion.

My learned brother having discussed no standard of his own, I can of course have no reply to it. Some allusion was made—not very satisfactory—to the report of the city of Roxbury. But as far as I understand it, it may be considered as substantially conforming to my own view, and with an earnest petition to be forgiven for repeating the criterion, I shall have argued this case when I submit to you that we bring it up to every element which enters into that criterion.

To say that we cleave down an ancient and a noble whole into insignificance, is to say what is not true. To say that we unnecessarily multiply corporations, is to say what is not true. A town is presented with a corporate existence ; two blades of grass grow where one grew be-

fore ; and I call that pretty good farming, gentlemen, morally, politically, rurally. I trust that the political conditions of my standard are entirely satisfied.

I now have the honor to submit that we bring ourselves altogether within the other branch of my conditions, having satisfied you that we do not destroy a great corporation to make two insignificant corporations. I now am ready to advance to the question of the convenience and inconvenience—the good and the evil of the change itself, to the mass now of Roxbury. There is no public policy against us. If I can show you, looking now on this picture and then on that, that this proposed change is beneficial, you will commend yourselves by giving us a favorable Report. I do not say to our hearts or to our gratitude, or that we shall reward you with our votes, (for, alas, we are no constituents of yours, save in that enlarged sense in which we are constituents of all the representatives of Massachusetts,) but to your own sense of justice, for conferring a lasting public benefit upon the community. Passing from strong feeling, strong desire, cherished expectation, and fixed purpose, to the field of calm reason, we shall endeavor to satisfy you that good can be done. If I can not show you, not that some evil will not be done, but that the good will outweigh, appreciably and certainly, all the evil that there is or can be, then dismiss us from your presence. But if I shall show you a reasonable case, remember that you do not hold us to a mathematical demonstration, and that you will not turn away from us because we can not offer you certainty ; but if we show you that a great opportunity is afforded, according to a moral probability, to do a real good, if you do it I apprehend you do your duty.

But, sir, they say Old Roxbury opposes us, and objects to our setting up for ourselves. She loves us so tenderly

and so dearly that she wishes still to embrace us in her arms. Some of her citizens love us for the honors we aid in bestowing upon them and some of her officials for the contributions we make to her public treasury.

Gentlemen, I might turn to the witnesses who have testified, and to their salaries ; while running them over it would be easy to make a merriment of what is, in reality, a grave matter. It would seem, *to be sure*, as if they had testified "all for love, and a very little for the bottle." Methinks I hear the shout, "Great is Diana of the Ephesians ;" and then, in an undertone, "*for by this craft we live.*"

Mr. Dudley loves us at the rate of eleven hundred a year, and Mr. Howe a hundred and seventy-five. [Immense sensation.] Such love as this, Mr. Chairman, will never grow cold.

I submit to you that, upon the question of the annexation of Canada to the United States, it would be just as proper to call the Governor General of that Province, as he leaves the Queen, with his salary of £10,000 sterling annually, to give testimony upon the sentiments of the inhabitants, concerning the project, as it is to call these salaried gentlemen here to testify concerning the sentiments of the people of Roxbury on this question. No ! There is no real feeling there against our petition, trust me upon it. There are individuals who feel strongly, there is an organization which can create and diffuse a pretty powerful sentiment within a limited circle. Yet there are, even with the aid of that influence, but 486 out of 2000 voters who can be galvanized into the slightest degree of activity against such an application as this.

But let us go to the evils. I have found it infinitely

difficult, and think that you have yourselves, to lay fingers, out of all the heads my learned brother has been able to afford us, upon any thing like a clear and precise list of the evils which old Roxbury may suffer. Be they what they will, and come they in what shape they may—what are the evils which old Roxbury may receive? One of them touches us in our most sacred sensibilities. Of that I will speak before I am done. But I am speaking now of corporate interests. Of what are they afraid? There is an apprehension that the burden of lower Roxbury will be somewhat increased by the separation of the upper regions. That, I understand, is the general difficulty. It is put in various ways. They talk of the Irish population. But as I understand it, at last, there is some fear that the burdens of lower Roxbury will be enhanced by the separation. If they should be, I shall have the honor, not to pile up, but to hold up the mountain preponderance of benefit, on the other side, to counterbalance it.

But I intend to submit to you that it is mere cant and declamation, not in the hands of my learned brother, but in the hands of those whom he represents, and that there is not a particle of solid and intelligent reason to believe that the burdens of that Corporation will be enhanced, in proportion to their numbers, one seven thousandth part of a farthing, by the separation we so much desire.

But there is another class of burdens, and I meet them upon that class, for I saw that, by the way in which the subject was presented, they were making an unjust impression upon their hearers. I refer to the class from which the town derives no benefit, but which are only unmitigated burdens, and that is the foreign pauper population. They are afraid that they will have more Irish paupers to pay for if they are separated than if we remain together.

Now I say that there is no reasonable ground of belief that the burden will be increased on this part of Roxbury one particle more than it will on us. To say that, taking the entire mass which is now in both Roxburys, the chances are that more will live to be paupers there than among us is to assert what can not be proved. Who knows any thing about it? Who can say on the other hand that of that great tide of emigration with which the Old World is pouring itself upon us, that in the five and twenty years to come more of them will stop and remain in lower Roxbury than in upper? Who does not say that the person who makes such a statement has deserted the halls of legislation, and turned into a fortune teller and a gambler? He speculates on that of which all must be ignorant. Here is the honest Englishman, the pious Scotchman, the worthy German, the hardy Irishman, the gay Frenchman the happiest of them all, who are coming to this country by thousands; and this Legislature is to refuse us a corporation upon the learned ground that my learned friends are all but certain, that is all who have salaries, and offices, and fees, that more will light in their city than in our town. Their poor-house, they say, is better than ours; as if the lightning of God might not destroy it, or the accident of fire might not burn it down; as if ours might not be built better than theirs; as if foreigners were coming to this country to enter a good poor-house.

Who will tell me, when you look upon the two territories, when you consider that our gardens are to be laid out and our houses to be constructed, when these beauties here are to be made to present themselves all marriageable to the sun, they will not attract and pay the foreigner a thousand to one, nay even over and above a thousand to one, more than any attractions this overgrown and noisome

city of lower Roxbury will present. I would not abuse my clients, as my friend has done his, by implication. I intreat you to bear with me in considering whether or not it be a sheer conjecture, and whether there was any thing ever presented in the womb of the future to the mind of man, which is more of a fancy than that. There is not time and there is no need to break this butterfly upon a wheel. I find this business done very much to my hands in a very able document put forth by the city of Roxbury, before my friends had got excited in the progress of this very able investigation.

I know no other evil. But one has been adverted to in such strong terms to me as to excite our own sympathies, and so strong that I can not doubt that in every thing he said my brother was sincere. But in taking my leave of them, permit me to submit that the whole of this objection is altogether unfounded, exaggerated, and overstrained in its application to this deliberation to-night. My learned brother alludes to the cemetery. His allusion to that shows that he either imperfectly comprehends or he unsatisfactorily and incompletely reciprocates what I thought was the admirable manner in which my learned friend discussed that part of the case. It is not a matter which we can discuss. It should be transferred to the region of feeling. I would commit it to the matronage of Roxbury. I would commit it to the bereaved of lower Roxbury; to the mourner, who is the only inhabitant of the cemetery at last. And I say that no affection of the heart, no prejudice, no feeling, nothing so holy as that cemetery, or the sentiments connected with it, shall be neglected in order to accomplish the object of our petition. This cemetery shall be yielded to them, if you will permit

me to say so, free of burdens. We shall only be too glad to keep the thronged passage ways to it accessible. That place of the dead, that resting place of quiet, shall be guarded for them. The bones of both the Roxburys shall repose there till the sea gives up its dead. To whom of the dead or the living does it signify within what line of corporate territory it remains? The name shall be of Roxbury; the jurisdiction shall be in Roxbury; the property shall be in Roxbury; the grounds shall be hallowed and appropriated to Roxbury, if they please to have it so, alone. And to the mourner how little it imports, since he can not hold the dear departed object any longer in his arms, or bury him in his church, or in his garden, but must send him to that old home—how little he regards the corporate name. Consecration, and purity, and peace, he desires; and he shall have them, in the bosom of a kindred, a Christian and a civilized community. If there were not sentiments in my own bosom which made me feel that my brother could not have said any thing on this subject without feeling, I should have believed that he could not consider that any objection to the grant of our petition. Do not let any thing connected with this sacred subject interrupt our proceedings. We do Roxbury, therefore, no harm in her pulse or in her heart. No harm! On the contrary, as I am about to take my leave of that subject, I will submit to you that, unless experience is a liar, separate us, and she shall grow by our growth, and strengthen with our strength. In this great growth both parties shall gain by the separation.

Will my brother allow me to remind you that if the prayer of this petition should be granted, and that if we enter into any thing like a ten thousandth part of her pros-

perity that we hope for, that if we shall behold on this or that beautiful spot a house or a cluster of houses, does not lower Roxbury know that every cask of lime and every foot of timber comes to her wharves, and we take it from her hands? I present it to you, that the benefit is as obviously hers, in the employment of her own wharves to bring the necessary articles for the improvement of our land, as it was for England a benefit if she had originally known that it was her true policy to give the colonies their freedom, and make them a market.

I have done with the evils, and I say that I find no evil. Public policy we satisfy, because we simply give to the State two daughters for one, and "each fairer than the other;" the daughter fairer than the fair mother herself—two for one:

"Matre pulchra, filia pulchrior."

Not either unable to go along, but each of them up to the standard, and beyond the average standard, of municipal respectability and municipal duty. Then we do no evil.

I am sure you will hardly suspect me at this time of night of a desire to declaim; but it is hardly extravagant to say that this bill which you are asked to pass will be received like another Declaration of Independence. The ringing of bells and the firing of bonfires will exhibit the feeling that exists. This strength and unanimity of feeling I regard as very high evidence that the interests of these persons will be promoted by this act; it is evidence that there are evils which they feel, and that the separation will be the remedy.

Boston is connected by ties to all parts of the State; but would you allow Boston to govern Norfolk, or Salem

to govern Essex, or New Bedford to govern Bristol? Certainly not! So here exactly is an illustration of what exists between us and our very good friends. This, gentlemen, is an agricultural district. It has agriculture for its general employment. Its market is Boston. Here and there is a beautiful clump of trees, as there will often be, and they grow a little on the side of that beautiful pond embosomed in Jamaica Plains. Here and there are the mechanic, the artisan, the blacksmith, the carpenter, just as there are in every farming town in Massachusetts. But its general character is agricultural, dotted here and there with a beautiful locality, standing out at last upon a plain farming land. This upper Roxbury, there it is! And it is quite true that, in point of fact, the inhabitants of wards six, seven and eight are thrown together by a general influence of locality, in addition to which some of them meet in the cars every day, going to and coming from Boston; but they never meet a Roxbury man once in a twelvemonth.

What is the character of the lower town? It is a trading and commercial town. There are the artificial sidewalks, the gas-lighted stores, the artificial supply of water, the crowded and noisome population, the indestructible character of the town. And there it will be for ever.

Strengthen the ties by which they may be bound together, in a freer and easier manner. But I do submit, that to tell the Committee that these two are one, is to disturb the political and social relations of civil life. An old poet has said, "God made the country and man made the town." A still older poet has said,

"God the first garden made,
And the first city Cain."

The city is, in the nature of things, very different from

the country. My brother may come with his honeyed words, and tell *how much he loves us*. But I ask for this separation on the ground of incompatibility of interest, and demand it, also, on the ground of incompatibility of temper. I remember to have passed a portion of my life in New Ipswich. There was Old Ipswich. There was the town and there the numbers. I will tell you an instance of their government of us. Among the objects of expenditure were fire engines, hose, hooks and ladders. I remember that the people of Old Ipswich kept all the engines in Chebacco, which was the old Indian name of the town, and sent down very religiously the hooks to New Ipswich, in order to pull down the buildings, to prevent any further spread of fire, every one of the houses being at least half a mile from each other. (Laughter.)

Not only do the petitioners seek a separation, but they seek a kind of government in which the whole people will have a freer action on the administration of affairs. They want a town government.

To determine, in town meeting, what shall be done by the people is one of the most inestimable of privileges. I have not lived long enough in cities to believe that that privilege is not still held inestimable by the people. The towns are enabled to judge practically of the economical expenditure of their money. If they determine on an expenditure, and determine it in advance, I think that the chances are ten thousand to one that their expenditures will be wiser made than if they entrusted the decision of them to boards sitting in the dark, or, at least, in the night-time. And when the objects of the expenditure are explained, I maintain that the power to judge in advance, to judge in the day-time, is better than to act upon a report without

knowing any thing about the subject. It is all the difference between possessing substantial influence, and being mocked by the semblance of power without its reality.

There are higher reasons, which I should present if I did not fear to trespass on your time, why I maintain that the mode of government by town meeting should be religiously observed with every community in which it is practicable. These town meetings are the free schools of free men; they are the schools where the people learn to think upon public affairs; where they learn the first lessons of self-government; where they learn for the first time to examine public subjects, to debate in the presence of one another, and to exchange opinions on public questions of importance. They carry, therefore, gentlemen, public life down to the minutest member of society; and they connect the minutest inhabitant of the smallest and remotest town directly at last with the State.

I regard the town governments as great educational agencies, therefore, for the present and for the future; I regard them as great agencies for the retaining of liberty alive, for teaching its spirit, and furnishing an ability to maintain it. I honor them for what they have done. I am reminded, in this connection—as one who has preceded me was reminded of, and alluded to Mr. Jefferson—I am reminded of a man, one of ourselves, better than Jefferson. I refer to the sentiments of John Adams. No one understood better than he the causes of the Revolution, or the circumstances by which the American mind was influenced. I have been looking recently at a letter which he addressed, in 1782, to a celebrated Frenchman, who was about doing so absurd a thing as to write a history of the American Revolution, and was asking Mr. Adams about the authorities necessary for that purpose. In his reply, written in English, but translated

into French, and the original lost, Mr. Adams observes, that there are four great institutions in this country, to the workings of which he must pay particular attention. The first of these was the towns, in town meetings assembled, as among the great influences causing the American Revolution. He went on to describe the practice of these towns, and adds that the effect of that institution had been that all the inhabitants had acquired from their youth the habit of discussing, deliberating, and determining upon public affairs. It was among these little primitive and pure democracies that the sentiments of the community, from the commencement of the dispute with England to the surrender at Yorktown, were first formed, and their resolutions first adopted. Keep, then, these schools of thought and action open, as you keep the school-house of the child open, and for the same reason. I have often been struck that in the crowded population of cities, in the meetings of clubs and societies, men's minds become very expert, and men become prompt in action. The agricultural mind, on the contrary, is slower. The agricultural mind is differently trained. He who follows that profession has different circumstances around him. The population is sparse. You hear already that there is a total loss of interest in West Roxbury in public affairs.

I have not time to develope the idea, but I am sure you will regard with all solicitude every institution and every influence everywhere that shall educate the mature agricultural mind, and enable it to perform its just part and hold its just place in the deliberations of the Legislature and of the State. You keep open the free school of the child. For God's sake do not shut the free school of the man !

I put it, therefore, to you, Mr. Chairman, to my friend

here, and I submit also to this Committee, while I recognize the necessity of a city, while on a certain area and under certain circumstances, the city government is indispensable, that, outside of that, "it is evil and only evil, and that continually." I do, therefore, submit to you, that it is one deserving, in this case, of the remedy proposed.

I go for good government by itself; and I think a town government is better for an agricultural district—better for the agriculturist as a man, and fits him better for all the offices in the Commonwealth. Make the change we ask for, and Roxbury takes her place at once in the circle of prosperity that surrounds her. Capital and taste will add the beauties of art to the beauties of nature. Capital and taste will then come to beautify and adorn; to blend the achievements of art with the matchless performances of nature.

But my brother thinks we shall drive out the middling classes. I submit to you that over and above the millionaires, the humble settlers will be directed this way by the Branch Railroad. These improvements, by which the wise policy of your predecessors has enabled this community to avail themselves of their opportunities for taste and enjoyment, will enable men who work all day in town to unite themselves to their families at night and treat themselves to the country air. What that is worth I had occasion, before a former committee, to endeavor to explain. And I have been so much struck by the inadequacy of my brother's view that we come here only to invite the millionaire among us, that I have to ask your attention to the fact, that one of the best uses of this town will be the moral influence which it will exert upon the no less useful,

but larger branch of society, the middling class. I had occasion, in advocating the establishment of a Branch Railroad, as I have occasion in arguing in favor of the establishment of this New Home, to deal with the moral uses of railways and of legislation.

But in my judgment no use of railroads is more worthy to fix the attention of the Legislature, and attract its favor, than this of enabling the man of small means to spend a portion of his time in the country, without prejudice to his means of livelihood. The evils of living wholly confined to town can hardly be appreciated by you, gentlemen, who have the advantage of residing elsewhere; but you may have formed some idea of them from what you have seen in winter. This road will give the man of limited income, whose bread, and whose family living, depend upon his being in the crowded haunts of traffic during the greater part of the day, the chance of spending his evenings, and his Sabbaths, in the pure and sweet air of the country, in the midst of his household circle, on his own little spot of ground, and yet enable him to be the next morning at his desk in the counting house, or place in the workshop, with little or no increase of cost. And I shall provoke no wise man's sneer when I say, that the many clusters of quiet cottages and beautiful dwellings, which will spring up along the line of our road, affording happy homes to the man of business, delightful retreats to the wearied citizen, are of themselves no small argument in favor of our petition. * * * I put it, sir, as one great advantage, that we traverse this region of country to win it from the wild flower, the wild bird, the night breezes of the sea, and make it the pleasant abode of hundreds who would else seldom see any thing but dusty streets, and forests of masts

at the wharfs. And if health is better than sickness, a full cheek than a sunken one, a bright, clear eye, than one dim and clouded, a happy and uncorrupt heart better than one tainted and debauched, and if our road shall be the means of bringing these advantages to the tired and driven merchant, book-keeper, or clerk, in Kilby or Washington street, whose wildest dreams have never yet indulged in the vision of a country seat of his own, the charter will not have been granted, nor the road built, in vain.

Give us, gentlemen, the government we seek, and this town will do for Roxbury what, thus far, the matchless beauties of Roxbury herself have been unable to do for herself. Gentlemen, it will do more. It will allay excitement ; it will reopen fountains of feeling ; it will enable men to know who they are and what they are ; it will cover you with the gratitude of thousands unknown to you by sight or name, with no vote to honor or reward you, but who will yet thank you, and the government for whom you act, for the performance of a great beneficent deed, I think too long delayed.

THE PINGREE CASE, JANUARY 24, 1851.

This case grew out of the insolvency of David Pingree, a gentleman who had been considered very wealthy, and whose failure astonished everybody. I heard Mr. Choate's argument against the assignees of Mr. Pingree and for the defendant corporation, and noted some of his points.

Among other things, one of the witnesses let fall the remark that Mr. Pingree had said, "He'd be d—d if his creditors should get a cent." Commenting on this, Mr. Choate said :—

They have said, I know not for what reason, save to

cast one more shadow over the sun of his prosperity, now transiently eclipsed, that he said something which *showed a disposition* to keep his creditors out of their money. This is, indeed, news to me and to my brother and to all the friends of David Pingree. No, the principles by which he amassed his vast fortune, are—the last cent to the creditor, the last plank, the last nail of the plank, all to him ; and it will be written on his grave, if the maxims of his life are there concentrated and engraved, as *the* maxim of his all, “Justice to the Creditor”

They say, the defendant company told him they wouldn't pay. They said they had suffered great losses by his neglect, by that culpable, irremediable idleness in the spring months ; that if he was damaged, they were by him half bankrupt ; his neglect had done it all ; the fruit ye sowed, said they, shall ye not also reap ? The years wasted in youth demand a heavy reckoning in age ; if ye sow the storm, shall ye not also reap the whirlwind ?

Such was Choate's eloquent rendering of a simple colloquy. Probably the actual words which passed on the occasion, thus eloquently described, between the company and the plaintiff, were only a demand for pay and a reply that they couldn't pay, for they had been more seriously injured by him than benefited.

Choate being for a corporation, closed very adroitly : “I know we're unpopular. It would be vain to dissemble that ; every lawyer knows that. But I put this case upon the honor, upon the conscience, upon the oath of the jury. I am not about to appeal to your feelings, I rest upon your minds.”

Then having thrown them off of any expectation of an appeal to their feelings, he goes on : But let me say,

that when it shall come to pass that contracts can be set aside, in a court of law, because they're unpopular, our whole social organization will tumble to the ground. Only let me remind you, that the house you live in, Mr. Foreman, is yours and not mine, only by *contract*. The bed you sleep on, and you and you (looking at the successive jurymen) is yours and not mine, only—by contract; and when, I say, it shall happen that contracts are legally evaded, there will be the real red republicanism in full riot among us—Red Republicanism ! yes, *scarlet red*.

SINGLE PASSAGES AND FELICITIES.

In a case in the Supreme Court, February 14, 1852, Mr. Charles B. Goodrich was the counsel opposed to Mr. Choate. He is an eminent lawyer. Choate, in arguing on law, misquoted an authority, by a slip of the tongue calling it "Goodrich's Reports, Vol. I." He instantly corrected his error of the name, but, turning with a patronizing dignity to the opposite counsel, he added, "I don't doubt it's all *in Goodrich*, however."

Any lawyer would have felt gratified by so felicitous a compliment.

In the case of Mr. Thomas Perkins, a gentleman who was sued for accidentally running over a child, Mr. Choate said, in allusion to the testimony of his medical experts upon the condition of the child : "We have called, Gentlemen of the jury, the most venerable physicians—those whom you would call if your wife were smitten with the arrows of death ; whom the nation would call when the mortal agony was on the man they loved—the 'old man eloquent.' They speak one voice."

Mr. Choate's acute analysis of evidence is well illustrated by a commentary I remember hearing him make in one of his cases, on a witness.

The witness testified that the plaintiff fell on a grate, in a southerly direction. "But," said Choate, "here were no less than three disturbing elements to prevent the witness from seeing exactly how he fell. First, his fall ; second, his instinctive struggle as he fell ; third, the rush of his companion to him."

A captain of a whale ship was sued by his seamen for giving them short commons and bad treatment. Choate was for the captain. The crew was a bad one, and he had no difficulty in dealing with the charge of ill-treatment ; but with the poor fare he had much more trouble. The sailors appeared and testified in the case.

Choate asked one of them, "What did you have on Sunday ?" He replied, "Duff." "What is duff ?" "Flour pudding and molasses." Next he asked, "What did you have on Tuesday ?" He replied, "Dundy funk." "What's dundy funk ?" said Choate. "Mince meat and potatoes," was the reply. "What did you have on Thursday ?" was next asked. "Lob-scouse," was the reply. "What's lob-scouse ?" "It's a stew."

It appeared, in the course of the trial, that the captain put into the Cape de Verds to procure vegetables. He succeeded in procuring a large quantity of squashes, but could only obtain some dozen onions, of which he gave one to each of the crew and retained one himself.

When Choate came to this branch of the case, he said : "It is in evidence, Gentlemen of the jury, that we had duff on Sunday, dundy-funk on Tuesday, and on Thursday that delicious compound, lob-scouse. And not only did

the captain furnish an abundant supply of that esculent and succulent vegetable of the tropics, the squash ; but with his own hand—aye, with his own paternal hand—he divided the onions among that ungrateful and rebellious crew !”

A blacksmith had failed in business. A friend, to enable him to start once more, loaned him some iron. A creditor attached it at his forge, almost as soon as he lifted his hammer to work. The friendly owner sued in trover for his iron. Choate was for him. After picturing the cruelty of the proceeding, referring to the unnecessary harshness of the attaching sheriff, who stopped the blacksmith in the very act of shoeing a horse, Choate said :

He arrested the arm of industry, as it fell upon the anvil ; he took the wind from the bellows that kindled the fire on the forge ; he stripped his shop of the material—the foundation of his labor—not leaving him iron enough to make a horse shoe to put over the door to keep the witches off.

PETITION FOR A RAILROAD FROM SALEM TO DANVERS.

[Extracts from the Speech of Mr. Choate, before Legislative Committee, February 28, 1851.]

MR. CHAIRMAN,

I have, in the first place, to represent that unfortunate, and yet I shall not hesitate to say, still meritorious corporation, the Essex Railroad Corporation ; and then to encounter the Salem and Lowell Railroad Corporation, backed up more or less by the Lowell and Lawrence Railroad Corporation, and also backed up by the Eastern Railroad Corporation.

Against this joint petition, covert or open, I have the honor to make this comprehensive and I trust decisive general reply ; that what these petitioners ask for is a parallel and competing railroad, in the strictest and most offensive sense, along its whole length, of exactly the same kind and the policy as those which the Legislature has decided so many times were not fit to be granted ; that there is not the least particle of necessity for it according to the doctrine which has been immemorially established by this government, that the evil shall outweigh the good ; and that all the good may be accomplished in another way, so as to avoid every one of the ills to be apprehended from the course petitioned for. So that, therefore, I do respectfully submit that to establish the road prayed for by this petition is to work a totally needless and a totally uncompensated mischief. That is in a general way the answer we have to make to at least the Salem and Lowell Railroad. To this I have in the briefest terms to invite the candor of the Committee.

In the first place, that it is the most bold, decided, and flagrant competing railroad is perfectly clear. In its whole length, it is all but a mathematical coincident with our own. It approaches within seven feet, for a considerable distance, of the track of our corporation. It dares to rest itself upon our very road-bed, too near, a great deal, according to the testimony of the experts in this case, for the operation of the engines ; too near for the lives and limbs of the officers and operatives, if their lives and limbs are of any account ; so close as to render it very dangerous to make any repairs or to clear off any obstructions from either road, while the other is in operation.

I submit that this is a perfectly plain case of a parallel and competing railroad within the Commonwealth, and

directly subject to the evils applicable to this species of property.

One word in passing only. Permit me to say that it would be one of the most cruel disappointments of the most reasonable expectations of these hundreds of little proprietors whom I have the honor here to represent; it would be one of the most extraordinary acts that has ever been witnessed in Massachusetts legislation, to comply with the request of the petitioners. When that road was projected, it was known that it was built for Lawrence business, and it is proved by the evidence in this case. It was seen that there was a new Lowell rising. And this Railroad was to bring the products of the water power of that new Lowell to Salem harbor. The men and women, the five hundred dollar holders and the five dollar holders of the stock, led by a man whose name has been honored in this corporation, entered into this project which I have indicated. And a reasonable protection in the pursuit of that object you gave. I will not say, you break your faith if you take it away. All this strong theory is exploded by the decision of the judicial tribunal. But you gave us a reasonable assurance that, unless an exigency demanded, we might trust you.

What have we before you? We have this state of things. This inconvenience, this exigency of theirs may be, to a reasonable and probable certainty, removed in a better and in a less mischievous and injurious way. That is our answer to their exigency. And on that answer, I, with entire confidence, rely. A double track, now nearly constructed, with some comparatively trivial but perfectly practical arrangements of details, will cure it instantly and

perfectly. Yes, gentlemen, without the scandal of a railroad laid for a couple of miles within seven feet of another ; without the scandal of a railroad, so that one shall occupy the very bed of another ; without a competition with ourselves ; without taking away the hope of a corporation by taking away its business ; without enabling a friend to nestle in its bosom, and then to sting it to death ; without taking private property to the amount of a farthing ; without withdrawing private capital to the third of a mill ; without laying a railroad across another railroad on the same grade, as if human life were of no value ; sparing us all these, the double track, together with such details as I shall show you, will probably, *will probably*, WILL PROBABLY, and that is enough for the human lawgiver, will, to a moral certainty, *probably* exhaust every exigency that shall come before you, and cause, instead of uncounted mischief, unmixed good, which I am sure my friend on the other side will agree is better.

That is all my case. And that is case enough. I put it to you that that single proposition upon the subject of the exigency, and the mode of meeting that exigency, argues and disposes of this case.

We are in your hands ; not appealing to your sensibilities, not offering to you votes ; but we are in your equity and in your justice. Extend to us only the settled policy of this Commonwealth against sharp parallel competition ; do not lay this fierce competitor in our very couch ; instead of taking our road-bed for him to lie down on, give us three, four or five per cent. for an income ; allow us to go into the market to get money ; and my life on it, on the testimony of men whom I have deemed all but oracular, that road will come up again upon its feet, and

you will gladden many a heart of which you will know nothing ; you will raise six hundred thousand dollars and give it as absolutely to the currents of life and circulation as if it were so much gold dug from the fathomless mines.

JOSEPH IASIGI, *et al.*, vs. JAMES BROWN.

This was a case tried in February, 1856, in the United States Circuit Court, in which the defendant was sued for damages for writing a letter to the plaintiff which induced him to sell to a certain person on credit, which person proved insolvent. It was not pretended that there was any moral intent to deceive. The case excited great interest, from the wealth and standing of the parties, as well as its rather unusual character.

Mr. Choate began his argument, by saying that it was with difficulty he stood up before the jury, so unwell was he. I noticed myself how unusually wan and woe-begone he looked, but in some portions of the speech he rose to great heights of power and splendor. His unfathomable eyes burned with a basilisk glare, as his feelings got the upper hand, and the thick folds of his pale countenance worked in strange contortions in the extremity of his passions. The Bar was crowded with lawyers and Cambridge students.

Mr. Choate began in his usually impressive and slow manner, apparently bowed down with the sense of the responsibility resting upon him. His long pale fingers trembled like the aspen leaf, as he turned over his enigmatical papers before him. He alluded in a highly complimentary way to Governor Clifford's (his adversary) argument, characterizing it as "*powerful, brilliant, and beautiful.*" He

more than once afterwards called it a "*silver argument*." After his exordium he soon lighted up the fires of his mind.

The following are a few of the lighter flashes that played over the solid links of his argument. They were highly appreciated by the persons present, and a friend took them down at the time. A good deal of their effect is lost here.

Speaking of securities being given of houses in New York city to a person of Boston, which were burned down immediately, he screamed into the ears of the jury, "*what kind of security do you call half a dozen loads of ashes and cinders, and a few controverted policies?*"

When speaking of his client's bales of wool, which he had sold to a person on the recommendation of his solvency by the defendant, who, to secure himself, had attached this very wool, he shouted, "Better had my client thrown the bales of wool out of the window into the dock at spring tide and water gathered by a hurricane, than to have done as he did." Again: "Shall our wool go to wrap up the defendant's character from the cold?"

When reading and commenting upon the letter written by the defendant representing the corporation solvent, to which his client thereby became a creditor, he dwelt a good deal on the words "*naked construction*." Said he, "I like that word '*naked*;' it is a classical word—means clear, broad daylight; naked truth."

Alluding to a young man of whom the defendant desired it to appear that, on account of his inexperience and deep sense of morality he would do nothing positively wrong, he said with the keenest sarcasm, "A positive assurance he found it, and being a young man (ironically) it touched his heart." This was said in so sly and queer a tone that every person in the room screamed with laughter.

The defendant, who, during Governor Clifford's argument, looked up with a good deal of self-assurance, and seemed to feel certain of his entire right in the cause, now looked down-drooping all the time, as the orator went on.

At 12 o'clock the Court took a recess of a few minutes, and when it again assembled the judge announced that Mr. Choate was too ill to proceed, and adjourned over till Tuesday at 10 o'clock, A. M.

Tuesday. Mr. Choate resumed his argument this morning at 10 o'clock. He began laboring with all his energies to show the jury how great was the fraud done upon his client by Mr. Brown's letter to Mr. T. B. Curtis. "The letter was written *to be read*;" he said, "as much as Washington's Farewell Address, or Junius' Letter to the King (which Edmund Burke said made the flesh crawl to read), or an advertisement over a door, was written to be read."

Turning to Governor Clifford, he said: "There are a few lines which perhaps my brother Clifford, being a young man, may not remember, but which the Court may, much used by old Federalists in 'Torpedo Times,' to ridicule the administration of Mr. Jefferson, which ran thus:

" 'We'll blow the Administration sky-high,
But we'll do it with *economie*.' "

"These lines Mr. Brown [the defendant] has changed slightly, and they run thus:

" 'We'll blow the wool merchants sky-high,
But we'll do it *confidentially*.' "

The effect was electrical on the hearers. The word "confidential," written at the head of the fatal letter, had so much importance in the case that it is impossible,

outside, to give the slightest notion of its effect in the couplet which he framed for the occasion. The letter from Brown to Curtis was marked "confidential," and the orator ingeniously interpreted it to mean (among many meanings he gave it for his own purpose) that Curtis might show it to whom he pleased, but not to mention from whom it came; that *confidential*, in the sense it had in the letter, meant that the writer himself should not be known. "What was the letter designed for?" he shouted. "Did Mr. Brown think Mr. Curtis was going to run up and down the street with his finger on the side of his nose and hold forth to all that Orin Thomson was solvent, and that he knew him to be so, and Mr. Brown kept in the dark? No! Mr. Curtis is a man of honor, and would reply to Mr. Brown as the youthful Alexander Hamilton did to the great Washington—'that he venerated him, that he respected him, but he never would be his lackey.' If the house of Mr. Curtis had burned down, and the plaintiff had found such a letter—lost amidst the confusion of burning—he would not have presented it as an inducement to him to make sales to Thomson & Co. No, the defendant could then reply, 'Thou canst not say I did it.'"

To show how a person might make a mortgage of his property and at the same time be worth as much or more than before (a circumstance pertinent to this case), Governor Clifford, in his argument, made the following supposition: "Suppose," said he, "that I should mortgage my house that overlooks a fine bay in the southern part of the State, and is perhaps worth \$20,000, for the sum of \$15,000, and with that \$15,000 I should buy an estate worth \$30,000, should I be worse off, or poorer, because I had mortgaged my house?"

Choate answered this, to my great astonishment, in

three complete refutations of it, as it applied to the property of Thomson & Co., and this was the property to which Mr. Clifford had likened it.

"First," said he, (and he straightened up his gaunt form as he spoke) "the property was mortgaged to pay an old debt—to pay for a dead horse. Secondly, it was mortgaged to pay a new debt to an extent far beyond its value; and, thirdly, it was pledged to meet future liabilities to an enormous amount." It is not clear, from what is here stated, how some of this could well be, and I am not familiar enough with the circumstances to state the sums for which the property was mortgaged.

His peroration was very impressive; and the audience hung fascinated on his closing words, in breathless silence, as if they were the last syllables of an unearthly visitant. He made a very apt quotation from "The Merchant of Venice;" and speaking of his clients, one of whom, Mr. Iasigi, was from Greece, and the other, Mr. Goddard, from New England, he said: "It matters not, Gentlemen of the jury, who it is seeks for justice; it is as much one's as another's; as much Mr. Goddard's, the son of a Boston mechanic, as it is due to the other, an adopted son from the bright shores of the Egean Sea."

A PLAINTIFF AGAINST MAJOR-GENERAL EDMANDS, AND
THE CITY OF BOSTON.

January 30, 1856.—Mr. Choate yesterday, in the hearing before the full Bench of the Supreme Court, in the suit brought by a plaintiff against Major General Edmands and others, for injuries received by the soldiery at the rendition of Anthony Burns, made some fine points, which I preserved and committed to paper.

He said : May it please your Honors, I never voted for Mayor Smith, but I now vote him my thanks for doing just what they charge upon him; so ought every man who owns a house in Boston; so ought every man who had a child in Boston, or a friend in Boston on that day.

What ! shall the City be allowed the privilege, accorded in every refined, and delicate, and decorous civilization, of closing her streets against all unseemly intrusion, whenever she moves in funeral or festive solemnity or pageantry, and *the State has her robes on*, and shall she not stop her streets when Death yawns and Terror speaks in the faces of the multitude ?

Who can go back *now* and see and inquire what causes Mayor Smith had of reasonable apprehension that there would be danger of bloody riot ? Can we look again on that threatening face of a menacing crowd ? Can we hear the sounds and see the sights which *then* rung and flashed on ear and eye ?

That meeting in Faneuil Hall ! They counseled *no violence*. Oh no—no violence ! The dial *spoke* not, but it made most manifest signs, and pointed to the stroke of *murder*;—*three hours* afterwards, *Batchelder was killed* ! Oh no—no violence ! no violence !

Mr. Ellis, counsel for plaintiff, here started to his feet, with great excitement of manner, and interrupted. The Chief Justice rumbled forth something inaudible ; the spectators stared. Burly and bluff John P. Hale, who was present as senior counsel for plaintiff, rose also ; and for a moment all was stir and sensation in this court drama ; in the midst of all which Mr. Choate stood erect, rampant, defiant, and with dilated nostril, as if snuffing up the air, in disdainful and daring arrogance.

MARINE INSURANCE CASE.

[George S. Hillard for Plaintiff, Rufus Choate for the Defendant or Insurance Company.]

Mr. Choate, for the defendant, made two principal points, and I took down some of his argument :

1st. The vessel was stowed in a manner to make her unseaworthy.

2d. She was not lost by a peril enumerated in the policy.

He said : The vessel after leaving the smooth water of Boston harbor encountered the eternal motion of the ocean, which has been there from creation, and will be there till land and sea shall be no more. But she was so laden, and her pumps were so bad, she was no better than a coffin for all on board.

She went down the harbor, said he, a painted and perfidious thing ; soul freighted, but a coffin for the living—a coffin for the dead. Meaning thereby to intimate that she was not seaworthy at the start.

Again, he said, They say the entire demoralization of the crew, disheartened, etc., was a cause justifying her abandonment. What, was the forecastle to determine the abandonment ? I have heard that always in all great encounters, on land or sea, with the enemy or the elements, the rank and file have always flinched. It is *the officers* who have upheld the morale ; and, therefore, in all the great engagements of every nation, English, German, or the more gallant French, our own, every one,—the mortality of battle has always been severest on the officers ; and I have to say, that this Yankee captain somewhat failed of his duty to his Yankee ship, in yielding to this demoralized crew.

SUNDRY PETITIONS

[For a railroad by different routes, from Boston to the valley of the Blackstone, in Massachusetts. 1847. Heard before a Committee of the Legislature.]

Notes taken at the hearing by a friend ;—Mr. Choate, for the petitioners of the Perkins route, closed substantially as follows :—

Give us this road, Mr. Chairman (alluding to Colonel Bullock, of Worcester, chairman of the Committee on Railways and Canals on the part of the House), and your name will live for ever in the memory of the people of Worcester ; for we propose to locate our road in Blackstone, Massachusetts, and *not* in Woonsocket, in the State of Rhode Island and Providence Plantations. Give it to us, and you will secure for yourself an immortality that it falls to the lot of few to attain ; give it to us, and we will build a magnificent city in that old county of Worcester, worthy of the age in which we live ; give it to us, and we will bring into action the mighty but sleeping energies of nature ;—water enough, sir, for *two* Lowells—not one—*two*.

* * * * *

In reference to the Walpole route, which was a little and short spur of railroad, crossing from one location to another, and of which, while seeming indifferent, his clients were really very much afraid, he said ;—Pardon me, Mr. Chairman and gentlemen, in presuming to occupy your time for a single moment, for a single moment only, to barely allude to that *insignificant* project, known here before you as the Walpole route ; so ably represented by my brother, Mr. John C. Park. Less than thirty seconds will suffice me in saying what I have to say in regard to this project of *so little consequence* to us. For I believe, sir, that Goldsmith must have had this very identical route in his mind when he said

"Man wants but little here below,
Nor wants that little *long*." (Great laughter.)

* * * * *

In reference to the Pettee route, he observed : Allow me now to lay aside the advocate for a single moment, a single moment, Mr. Chairman, and speak as a citizen of Boston.

As a citizen of Boston, I protest against the establishment of this gigantic and stupendous nuisance, (proposed depot building on Charles street, near the Common) to be placed in that beautiful locality. I speak not for the wealth or the aristocracy of Beacon street, but for the masses ; the men, women and children who desire to breathe the air of heaven, undisturbed and unmolested, after the toils, labors and excitements of the day, upon this beautiful Common of ours, the pride and ornament of our city. Blessed be the memory of that public benefactor who gave us this charming spot, surrounded with such wise restrictions ! And I beseech you, I implore you, to look with unfavorable eyes upon any project which will transfer from our business centers *the hurly burly of all creation* to the Western Avenue. Listen, I beg of you, with unwilling ears, to any proposition that will so seriously, so effectually, so disastrously annoy us, and disturb the peace, the comfort, the happiness of this entire community. Plant this depot there, and we will bid farewell, a long farewell to all quiet and repose, and our eyes will behold the inauguration of chaos and confusion. Protect us from this desecration, this terrible disaster which threatens us, this *terror incognitus*, and the blessings of thousands of the living will be upon your heads, and the benedictions of posterity will be upon the memory of this generation.

But grant the prayer of Mr. Pettee, and where there is peace and quiet and order now, you will have the awful

glare and thundering pace of engines—steam, fire, thunder, lightning, Stromboli, whistles, Etna, Vesuvius—Hell itself, sir, will break loose!—*and all this for Mr. Pettee's railroad!*

DESCRIPTION OF THE TRIAL AND ARGUMENT OF THE
DALTON DIVORCE CASE.

There have been but few cases tried in our Boston courts, which have excited more wide and rapt interest than did the libel for a divorce brought by Mr. Frank Dalton against his wife (born Miss Helen Gove). Some time before, a sort of intrigue had been supposed to have been discovered by the husband between his wife and a youth named Sumner. Upon this discovery, the wife had been compelled by her husband to get Sumner to the house, and there he was terribly beaten by him. The youth went home after the beating, was taken sick, and soon died. Dalton was tried for the assault, but it was not clear that the deceased died directly from the effects of the beating; and he was not convicted of manslaughter. There was then a reconciliation between husband and wife. Subsequently, however, from some cause, the husband left her, and filed his libel for divorce. Mr. Choate appeared for the lady, and against the divorce.

The whole argument was most carefully reported phonographically, and as it was of such public interest, it will doubtless be found in the collection of his works. I prefer, therefore, rather than to print any imperfect portions of it, to give an outline description of it, which I wrote at the time for the *Boston Traveler*.

THE DALTON DRAMA AND RUFUS CHOATE.—While Camille has been playing at our Boston Theater, the Dal-

ton drama has been playing at our Boston Court House. Both have been greeted with thronged houses. The latter, however, being a sin, *real*, not painted, and a life-long agony, has properly provoked far more attention and criticism.

The renown of the advocate of the wife's honor in this case, Mr. Choate, added fuel to the fire of burning curiosity ; and when, on Tuesday, the evidence closed, the public interest was on tiptoe. It has rarely happened even to him to rise in a case upon which so intently, and for so long a time, the public eye had been riveted. Day after day, during all the examination of the witnesses, the court room had been crowded ; and as each new leaf of scandal, or shame, or falsehood, was turned over, the pulses of the eager auditors throbbed in unison, and the looks of the galleries indicated that they were ravenous for more. But the audience was not merely that Court room auditory. Every day the great public itself, the whole city, had looked in on every detail of the case, through the open windows of the newspapers. They had watched closely every fluctuation of the family revealings, and calculated, like another but greater Jury, the weight and issue of the testimony. There was a double motive for this : first, there was the craving natural to man for scandalous details ; and then there was the natural solicitude of grave men and heads of families, to know if even New England, iron-bound in Puritanism, was relaxing her decorum ; and was beginning to walk a little under "the insidious light and the delirious music of houses of pleasure," as Choate called it.

In the midst, then, of this vast expectancy ; in presence of thousands, in presence, as it were, of the assembled city ; in presence of attentive New England, the advocate rose to

speak ; but wider even than our section of country, were his words to be winged ; for Mr. Dana, in replying to him, truly said, alluding to Coburn (a witness whom Choate denounced), that the victim who had been smitten by the bolt of Choate's denunciation was lost ; he might go to the East or to the West, in his endeavors to reform, but that tremendous invective would always blacken before him, and his reputation would track him with the fatal footsteps of Nemesis.

On Tuesday morning, at an early hour, every avenue to the Court room was literally blockaded with people. While the crowd within were waiting patiently for the argument to commence, crammed so closely that men almost stood on each other, the Sheriff provoked uproarious laughter by rising with the gilt insignia of his Sherifalty about him, and respectfully announcing, that those gentlemen who were on the *second* wing might have "leave to withdraw." Considering that five dollars was said to have been offered for a standing place, and that, once in, no man could get out without becoming a shadow, this business-like intimation was certainly droll.

When Judge Merrick came in, Mr. Choate stood up. To the apparent disappointment of the prodigious expectation which had reckoned on an immediate outbreak of oratoric fireworks, he commenced to read to the Judge, in a very quiet manner, some extracts from an old law book ; then, turning to the Jury, who sat as if braced to receive a series of torpedo shocks, he began in a grave but quiet colloquial way, as if he was only button-holing a man in conversation in the street.

His first day was occupied in presenting general considerations, tending to disarm hostility and propitiate favor for his fair client's cause, who sat behind him, not exactly

“like Niobe, *all* tears”—tears only occasionally ; there were tears enough, however, to fill out the picture which Mr. Dana subsequently implored the Jury might not turn out to be the history of the case—“a few tears, the eloquent breath of an orator, and all is over for the husband.” In this first day, also, the advocate for the wife seemed utterly to demolish that whole story which, most of all, has shocked and affrighted the public ; the story that in a respectable family in our midst, the crime of infanticide was as common as childbirth ; and that time after time, one daughter after another of that house was “subjected to the butcher knife of Dr. Calkins” or some other male or female operator. Finally, in this first day, was presented also the “two great views” upon which Mr. Choate rested his case ; first, that Mrs. Dalton never really loved her lover, but, though dizzy with the intoxicating incense of his adoration she always really loved her husband ; and second, that after all the revelations which had been made, and upon which this case rested, Dalton, the husband, had himself adjudged her not guilty, by taking her to his bosom to live with him, for several weeks.

These two views, thus suggested, became the key-note of the whole argument. Much else of course was said, the mass of evidence was contemplated from many standpoints ; but ever and anon, like the dominant air of an opera, this strain returned ; now the performer compressed it, now he expanded and prolonged it with his unequalled witchery of words ; and so it rose and fell before the minds of the Jury, through the introduction, the argument, the appeal—overture, concertos, and all. From whatever angle he looked at the facts, from whatever chords he struck the tones, you heard ever the same recurring strain,—*Nellie still* loved him, *Frank believed* her guiltless. Therefore, of course,

the inference would be natural, if she still loved her wedded husband, all the time of the intimacy with Sumner, it was mere boy's-play and not guilt ; therefore, also, if *he*, who of all men best knew how to try her, had at first adjudged her not criminal, the Jury should adjudge her not criminal.

It was very interesting to see the art and the address with which, in every light, the tissues of these two thoughts were shot across the threadwork of the argument, and to hear with what perpetual variety the same monotonous tones were rung. In speaking of the fond, trusting letters written by the husband to the wife, in the murderer's cell, he described them as "One long sigh—one long, sad strain of music—that music, 'Home, sweet home, and *you* its destined idol.'" Her letters to him, in reply, he painted as charged with a deep pathos of affection,—such as no Confessions of Rousseau, no Abelard, no Heloisa, could throw into the shade.

The first day having been occupied in stating his own case, in the second day of his argument he discussed the adversary's case.

It would be in vain to try to describe how he explained away the damning letters from "Nellie" to Sumner ; *two* of which had been preserved and proved. "I must read them to the jury," he said—"I, who am fallen into the sere and yellow leaf ; when they should better be read by my curled and handsome friends, the other counsel in the case."

In accounting for John H. Coburn's seeming hostility to Mr. Gove, the father of Mrs. Dalton, will anybody who was present ever forget, with what a manner he intimated that Coburn was trying to make something out of him ; —either money, or, as Gove was a clothing merchant, even a suit of clothes. "Why," said the witty advocate, with

a humor worthy of Curran, "Coburn said to himself, 'I see *pantaloons* in the distance.'"

His defense of some imprudent conduct into which Mr. Gove seemed to have been led by his feelings, and which bore the semblance of tampering with a juryman, was admirable. He pictured him as haunted day and night with this case, and the fate of this daughter. "In his dreams it shadows his pillow—dreams, did I say? he *sleeps not*, save under the anodyne draught; and is it passing strange that his agony of solicitude should unman him—that the father should conquer the citizen?"

It was very essential to his case that the gulf which yawns between "imprudence" and adultery, should gape as wide as possible; and he stretched it, till one might almost think the imprudent woman wandering upon its margin "by the insidious light," was less likely than the prudent one, who walked afar off, to fall into the abyss. Of the imprudent flirt, we speak, he said, in terms of disapprobation; of the adulteress, we sing, if we say any thing, "Oh no, we never mention her!" And her presence in our houses is hardly less astounding, than the sight of a goblin damned.

Perhaps the funniest passage in the whole was where he showed how Coburn, apprehensive of cross-examination in Court, got the erysipelas in his feet; and thereupon (alluding to the taking of his deposition, which contradicted his testimony afterwards given) "We sent Drs. Durant and Dana to him; they *cured the patient*,—*but they killed the witness*." (Mr. Durant and Mr. Dana were the other lawyers in the case.)

Take this argument of Mr. Choate as a whole, it is to be considered a great intellectual effort. It was more severely intellectual and logical, even, than it was orna-

mental and passionate. Throughout the whole it will be difficult to find any passage of description, invective, or pathos, that does not tend directly to, and help on, the main current of the argument. It does not contain any single passages of such memorable beauty as Erskine's Indian, in the Stockdale libel case ; nor such as the same advocate gave in the case of Howard *vs.* Bingham ; that famous case in which, though appearing for the defendant, the alleged seducer, he continued to represent him as the party sinned against ; as defrauded by the husband of a love which he had cherished for the lady, for years before the husband saw her. But it must be remembered, that, in this Dalton case, the advocate had circumstances against him ; and that the array of the higher thoughts by which alone noble rhetorical flights must mount, was barred from him. This argument has, however, full as much sustained rhetorical and more logical power than Curran's argument in the great case of seduction, Massey *vs.* the Marquis of Headford ; in which the husband recovered \$50,000.

Those good people who imagine that, because they have listened to Mr. Choate, in the delivery of a lecture, they have heard Choate, the orator-advocate, would have confessed their blunder had they been in Court on this occasion. To see our great advocate in one of these displays is a theatric spectacle. When Pinkney spoke, all the belles of the city went to Court, said Judge Story to the Law School ; and when *our* Pinkney speaks, every mortal gets into Court who can. Then to follow him in his varying appeals to every vulnerable point of the Jury's human nature—the mighty stream of his unbroken volubility,—his black eye burning blacker than night—now turning to the Judge, now brandishing his arm over the head of the op-

posite counsel—now marching up to and confronting the “twelve men,” and now lifting his glance as if obtesting Heaven—take it all in all, we may well exclaim, as the Portuguese rhapsodist comically said, astonished out of himself at the surpassing beauty of the Azores—“Oh for a portrait painter, to paint the scene—terrestrial and celestial.”

In this case Mr. Choate succeeded, for the Jury did *not* divorce the parties. And it is understood that they are now living happily together in a distant State.

TILTON *vs.* TREMONT MUTUAL INSURANCE COMPANY.

Mr. Choate was senior counsel for the plaintiff in this case. He spoke nearly four hours, in an unusual strain of logic and reasoning. Chief Justice Shaw twice told him he must be brief; and at last stopped him. The baffled reasoner declared he left the case with the Jury “unfinished and incomplete,” to use his words. He indulged very little in rhetoric, and the following instances which he used very happily, a friend who was present, took down:

“The Captain of the ship feeling himself upon the back of so noble an animal put in the spurs and gave her the reins.” This was in allusion to the “clipper ship,” which he alleged, as plaintiff, had been strained and injured by the perils of the sea and the ardor of the young Master in making a quick voyage.

Again, in allusion to the damaged appearance of the ship at Rio Janeiro, where she was repaired, he asked in a terrific tone, “If a strong man goes forth upon a journey, and at the end is found bleeding,—what may we ask was the cause? Is it not clear that something overtook him on his way?”

He quoted from "Macbeth," where he "calls up the master and servants," and applied it to the defendants.

In speaking of the sailors, in respect to whom the defendants' counsel made a taunt, because he did not produce them on the witness stand, he said, "Must we chase the eagle to his eyrie?—these sailors who have flown to the ends of the earth!"

In following him, Governor Clifford, who was the opposite counsel, commenced by saying, "I will not attempt to measure his (Mr. Choate's) power, any more than I would measure the power of the sea itself, which *he* will tell you is immeasurable."

SHAW *vs.* WORCESTER RAILROAD

May 7, 1858.—Yesterday (one year before he was to die), Choate argued Shaw *vs.* Worcester Railroad, in a manner worthy his palmiest days. I noted down extracts.

Speaking of the railroad station house, he said, "There was no baggage-man there, no station-man there, no friendly flag-man there;—for three quarters of an hour it was as lonely as the desert behind Algiers."

I was struck, for the thousandth time, with the intellectual change his appearance undergoes in the tempest and shock of his speaking; his brow lifts, swells, expands, tightens, and grows whiter with the crowding and tension of his thoughts.

Once, when he was interrupted in making an acute point to the jury by the adverse counsel, he paused a moment as if to hear the interruption and parry it; and as he did so, stooping his head toward the rail before the jury on which his hand rested, and turning his dark eyes toward

the interruption, his look was such as to remind one vividly of Booth's Richard III.

As illustrating the spell with which his thought possesses him, and his hearers also, I noticed this ; he paused before an emphatic sentence he was about to utter, and *actually clapped his hands three times*, in the same rate of time as that in which he had been speaking ; and yet nobody laughed, and the sentence was made only more effective.

Once in the course of his speech he turned round, and happened to fix his glaring eyes on an auditor, connected with the railroad, so fiercely and concentratedly and almost demoniacally,—he seemed to strike at the poor man with each sentence.

In the course of his argument, he said, “Gentlemen of the jury you are bound to try the right of this plaintiff by the head, and feel the injury in the *heart*. He (the injured man, whose widow sued) has gone to his account. After life's fitful fever he sleeps well—there let him rest. He was a husband worth keeping alive, or killing on a railroad.

We want justice ; not the ten thousandth part of a farthing from pity ; not feeling, but the coldest justice.

On came the terrible glare of that engine—that fire of hell ! There was no curving board of warning to him who would cross that track. There was no proud Arch to bid him stay—no friendly flag-man. They blew no whistle—that would have startled all but the dead ; then comes the collision—the wagon and the engine ; and it is not the giant that dies, but the weak.

From that moment, this Branch Railroad has been to the main Railroad, an ivy that has fed upon a princely trunk, and sucked the verdure out of it.

Is this a tale to be told on a winter's evening? The grave tells no tales.

My friend (the adverse counsel) whose courage no more than his ingenuity fails him in a bad case, thinks he has a witness, and a theory. Better had that witness slept in an early grave, with the engineer, than upon that stand morally and judicially TO HAVE LIED.

This case was tried several times; the Court every time setting aside the verdict, or allowing Exceptions. Each time the jury gave higher damages; finally it was tried for plaintiff by Henry Durant, Esq. The jury gave over twenty thousand dollars damages, and *it was paid*.

With this last case, the author closes this Chapter of his work. Although he has in his possession great numbers of Mr. Choate's Speeches, he does not insert even the most brilliant extracts from them, which he himself heard; preferring to leave that field of the great orator's reported Speeches, entirely untouched, to his family; from whom his formal Biography and Works are expected.

These Forensic Arguments, however, which make up this chapter, the author has here given somewhat fully; because most of them exist nowhere but in his own MSS. or MSS. given to him by friends; and unless here published, they would probably soon perish even from the traditions of Court street.

It must be remembered, however, by the reader, in

estimating them, that these passages are after all only Extracts ; as the size of the book precluded the publication of the arguments in full. And also, allowance must be made for the absence of that magical manner, which transfigured Mr. Choate, in his most rapt passages, into a positive apparition of splendor.

CHAPTER IX.

MISCELLANEOUS REMINISCENCES.

THE Lectures of Mr. Choate, as might have been expected, were very brilliant, erudite and fervid. Every year or two he would find time to write one for the Boston Mercantile Library Association, or some other Lyceum audience. He gave one in 1856, on "The Old Age of the Poet Rogers." Rogers had recently died, and the thoughts of the world had for a moment been turned to him. Mr. Choate, indeed, almost always took his lecture theme from some topic to which recent events had given a new and immediate interest.

I wrote at the time the following brief description of this Lecture, and the manner of its delivery, for a newspaper ; and it may give the reader, now, some idea of its character and effect.

DESCRIPTION OF MR. CHOATE'S LECTURE ON "THE OLD AGE OF THE POET ROGERS."

We wish to consider Mr. Choate's Address after a few hours have intervened between the delivery and our review of it, lest the enthusiasm of the advocate-orator should too partially affect our judgment. And yet, upon some little reflection, and in a cooler mood than that in which he left us when he closed, we find it difficult to disembarass ourselves of a sympathetic excitement, the moment we fairly attack the subject. He is so far beyond all our other orators in passionate and inspiring fervor, he so lifts us to

commanding elevations of sublimity, and he contrives to engage the sympathies and almost the affections (certainly the whole emotional part of one's nature) to such a degree, that every one who writes of him must write either as a frigid foe or a warm, sympathetic, and favoring friend. The lecture which he has just delivered before four thousand people, crowded—yes, *consolidated* together—three thousand of whom only could gain a seat, yet which held their rapt attention for an hour and a half, so that eyes were riveted as by magnetic polarity upon him, breath almost suspended to catch his faintest accent, and the whole vast, solid mass, as still as death all the time, one or two fainting women being carried out without in the least distracting their fixed and fascinated gaze ; and at the close no one, we venture to say, feeling otherwise than anxious to hear that voice still longer, as it pealed over the multitude, trumpet-like, in its clear, ringing, and rousing tones of emphasis, or sunk in a measured cadence which even the studied declaimer might have envied, save that it sank too low—the Address which accomplished this, must be deserving of more critical scrutiny and praise than is rendered by simply saying, “Oh, it was Rufus Choate, with a great reputation, and therefore they attended.”

We think great crowds may be attracted to a hall by a great reputation, but unless the celebrated person who is the magnet possesses some charm of oratory, their attention will, after a little while, become listless, and their attendance discontinued ; in other words, they will *go out*, to the consternation of the speaker. When Cassius M. Clay lectured here, on “Beauty,” there was a throng ; but they soon dwindled away under his somnolent violence of interrupted energy and sing-song superficiality of thought. But as we cast our eye over the thousands before Mr. Choate,

we saw them all looking like a congregation of statues, spell-bound.

The gorgeousness of his imagery, and its wonderful profusion, we think, somewhat masked and garlanded the frame-work of the thought; and to *that*, and not to a poverty of thought, or confusion of point, is to be attributed any want of an exact final impression of the leading ideas, of which some may possibly have been conscious.

Stripped of its ornamental glories, the abstract of his lecture, would be in the first place a very becoming deprecation of any comparison between his effort and the great "occasional" display of Mr. Everett, "conducting us through sounding galleries to Washington, upon the seat of gold;" (the famous Washington Address.) Then he opened an appropriate and learned consideration of the various kinds of the Old Age of genius; the philosophic, the learned, the practical, the poetical; and—last of all—the peculiarly felicitous and poetical evening of Rogers' old age, closing amid delightful memories and still more delightful friendships, and surrounded by every thing that was graceful and ornamental in art or letters; an old age when a stream—full and gentle—of wise thoughts, exquisite emotions, and images of amaranthine bloom, lighted by the immortal flame of beauty, flowed on for ever beneath the arches of his mind. From this, he passed easily to consider, with a few vivid touches which summoned them right up in bold relief, the radiant circle of poets of whom Rogers was not the least. He pictured the agitations and delights of mind with which their dawning was witnessed; how upon the arrival of a "Fourth Canto of Childe Harold," or a "Corinna" of De Stael, expectation and ecstasy were successively on tip-toe; and all those ecstasies of the readers of that race of genius, he boldly announced himself the de-

fender of. "I come to say," said he, "that that ardor of delight with which we packed them on our little bookshelves in college, or enthroned them in lordly libraries was all *due*, and not in the least extravagant."

Then very justly, he drew the age in its leading characteristics, in which and by which they were nurtured—the thunder and lightning of the hour of the Revolution of France, which charged them with all its electricity; that hour when, in the earthquake voices of her victories, France looked down from her house-tops on the desecration of altars and the marvelous march of the little Lieutenant of Corsica. How much such an age as this, filled with revolutions in speculative and practical matters, must have influenced those impressible children of genius, he briefly but pointedly indicated. Who, of them all, was the best and brightest, he found it impossible to tell, as each gained peculiar prominence at the moment of its perusal, but his own mind ran to *Scott*, as the foremost claimant of the laurel; and now followed a triumphant and passionate defense of Scott from the sentimentalizing depreciation of Carlyle. And *here* it was, the advocate habit broke out; for no sooner did Mr. Choate find himself assailing even a shadowy foe, than his eye began to blaze brighter, and his tones to swell and thunder; and when, in a grand, rising climax, he pictured Scott's heroes as inspiring heroism by the divine awakening influence of a nobility of martyrdom, to which the sleep and death-march of Leonidas and his Spartans was "a revel and a dance to the Dorian mood of soft recorders," we do not believe but what the dense mass of mind and matter before him would have risen up unanimously, and voted *him* the eminent laurel of eloquence; as he had just before appropriated to Walter Scott the laurels of literature by a "two-thirds vote of all who speak the

English tongue." We have heard great bursts of eloquence and impassioned cadences, but we doubt if we were ever affected, for a moment, more sensibly than then. It was literally almost as if a vast wave of the united feeling of the whole multitude surged up under every one's arm-pits.

The poets thus brilliant, thus begotten, and thus led, he now left for a momentary but apt allusion to the trophies of our own country in historical and poetical fields; and paid a final tribute to the poets whom he best loved on this side of the water, by setting the names of Dana, Bryant, and "Hiawatha," in a closing constellation of serene radiance.

Now, the hastiest reader, we think, will see here a germ of thought symmetrically developed. The poet Rogers, his "set," their education, our choice among them; and, lastly, American Bards not forgotten.

The most remarkable thing about it was, after all, that a man of most absorbing professional cares and occupations should show himself so thoroughly "posted up" in all poetical themes, names, such histories, and criticisms, and be able to blend them all, amid pressing, immediate professional calls, into such a gorgeous day-dream of beautiful thought. It is comparatively easy for a man of leisure, taste and means, with a noble library at command, to digest a discourse which shall glitter with gems, and to deliver it with an art which shall baffle criticism; but for a man who has to fight a battle in Courts every day, and who has thousands of dollars and hundreds of clients hanging on every step he takes—for him to give a Discourse, which by description, by quotation, by allusion, by criticism, by single words snatched from choice sentiments and immortal sentences, by biographical and historical references—by all the indicia possible, shows that he has the

instant mastery of a whole world of topic and thought, which alone might be the all-sufficient province of a great intelligence—this to us was something like a marvel.

Some one said of Gibbon, that he was great, but that he might have been made out of a *corner* of the mind of Edmund Burke ; so we say of any oratorical rival who may be suggested to this Prince of the Forum ; who realizes in his own person the famous definition of Cicero—that an Orator should be one universally learned, and able to master the special hero of every branch, in his own speciality.

But quite as much, we wonder at that power which could thus go back over and apparently revive every thing imaginative he had ever read ; bring up the thoughts and associations kindred and apt thereto ; and by such power of rapid description, by a single sentence sometimes, by a few suggestive words, or by one or two apt quotations, phrases or paragraphs, all melting fluently into each other, *flash* the whole in all its successive divisions of beauty upon the mind. Thus, for a single example, the whole German school of poetry and metaphysical sublimity and subtlety, reading “the riddle of the Universe,” he daguer-reotyped to an attentive mind in ten compact sentences. And, speaking generally, we will say, we never before heard such worlds of reading “touched off” in such a grand conflagration—a conflagration in which so many structures were clearly outlined, and all together made such a rhetorical blaze.

MR. CHOATE vs. NEW YORK TRIBUNE.

In 1857, Mr. Choate delivered a lecture before the Boston Mercantile Library Association, on “Revolutionary Eloquence.” It was in matter by far the most bril-

liant platform Address I ever heard from him. His heart was in it ; for Cicero, his favorite theme, was a chief subject of its panegyric.

A few days after its delivery, the *New-York Tribune* attacked its positions, and denied the correctness of its reasoning, especially in regard to Cicero.

Mr. Choate took the matter up, exactly as if a warm personal friend of his own had been assailed. He asked me to reply to the New York writer in one of our Boston papers. I did so, writing two or three articles ; which elicited another from the same source, reaffirming the hostile argument. Much of the thought, and the main line of argumentation in these articles, it is not inappropriate now to say, were furnished me *by him*. They are to be found, by any one who should feel disposed to see Mr. Choate's defense of Cicero, in successive numbers of the *Boston Traveller*, of March, 1857.

The language and arrangement only, were not his ; most of the thinking was. They were published as editorial matter, and I regret not having room to insert them here.

It was very interesting to observe, while this subject was in discussion, how absorbed Mr. Choate was in it. He sent for me nearly every morning with some new idea or suggestion to be presented, and rummaged over half his library for facts confirmatory of his views. He spoke of Cicero with the same sort of personal fondness as he would have spoken of Webster, had he been preparing to defend him from disparagement.

KOSSUTH'S ELOQUENCE.

Mr. Choate was powerfully impressed with the power and fascination of the oratory of the Magyar. His descrip-

tion of that eloquence was solemn with all the mystical sublimity of the lands of the Orient. He says: "Once again, since the Prophet foretold the destruction of the people and the coming *in* of the Assyrian, in tones every note of the strain sadder than before, we have listened to an eloquence—the sweetest the most mighty, the most mournful that man can ever utter or can ever hear—the Eloquence of an expiring Nation! How, after this, can we be quite sure, that the harp of Orpheus did not awake inanimate nature to a transient discourse of reason, and did not for one moment call back Eurydice, from the lower to the upper and the sweeter air?"

I remember a case in which he had occasion to depreciate the testimony of a witness, as colored essentially by his feelings. "This man's memory is playing with him," he said. "He thinks he is remembering; when he is only answering according to his passionate feelings. His memory, spell-bound by his feeling, summons to his too ready tongue successive incidents. Like the strange Woman of Endor, it stands before the eyes of his eager imagination, and seems to say to him,—What will you have now? What narrative? what picture? what phraseology? what ghost or spirit or thought shall I call up to memory?"

In a railroad case, where a wagon was run down, Mr. Choate said: "There was no forward motion. The horse stood *stock still; still as marble; a stone statue.*" This was a simple description, but I shall never forget the tremendous emphasis, with which he uttered these few words. His face was deadly pale; and the utterance smote the ear like a succession of sharp claps of thunder.

DESCRIPTION OF HIS POLITICAL SPEECHES.

His opening words in political speeches were often very effective.

I remember one in Faneuil Hall, when the old Cradle of Liberty was *rocking* with its thronging crowds. As the deafening cheers which greeted him subsided, the people heard his voice pealing out, "Once more unto the breach, dear friends, once more !"

And again, under similar circumstances, he commenced : "I am sick, fellow-citizens ; unable to stand here, unable *to be* here ; but I could not have lain still upon my bed if I had not risen at your summons, to come down here, and at least say—Amen, when you said, 'God bless General Zachary Taylor.'"

I think it was in the same Speech that he drew a most vivid picture of the huge audience before him,—“the beauty and the bravery of Boston, the solid men and the active men, business, commerce, wealth, thought, all represented ; and, before me now, rising rank on rank to the skies.”

The most brilliant political speeches I ever heard, were those which Mr. Choate made in the campaign which resulted in electing General Taylor to the Presidency. For the reason stated in the Preface, I do not insert any of them here ; but there was a single passage in one of them, of signal beauty and originality, which is worthy a separate preservation.

The ladies of Salem gave a Union banner to the Whig club of Salem, old Essex county, Mr. Choate's birth-place. He stood up to make the presentation speech ; he spoke words of rare felicity.

“I give you, from the ladies of this Salem—the holy

and beautiful city of Peace—a Banner of Peace ! Peace has her victories, however, as well as war. I give you then, I hope and believe, the Banner of a victory of Peace. The work of hands—some of which you doubtless have given away in marriage at the altar—the work of hands for which many altars might contend ! some of which have woven the more immortal web of thought and recorded speech, making the mind of Salem as renowned as its beauty—the work of such hands—embodying their general and warm appreciation of your exertions, and their joy in your prospects ; conveying at once the assurance of triumph and the consolations of possible defeat—expressive above all of their pure and considered moral judgments on the great cause and the Good Man !—the moral judgments of these, whose frown can disappoint the proudest aim, whose approbation prosper not less than ours—the work of such hands, the gift of such hearts—the record of such moral sentiments—the symbol of so many sensibilities and so many hopes—you will prize it more than if woven of the tints of a summer evening sunset, inscribed and wrought and brought down to earth by viewless artists of the skies.

We go for the Union to the last beat of the pulse, and the last drop of blood. We know and feel that there—there—in that endeared name—beneath that charmed Flag—among those old glorious graves—in that ample and that secure renown, that there *we have garnered up our hearts—there we must either live or bear no life.* With our sisters of the Republic, less or more, we would live, and we would die—“one hope, one lot, one life, one glory.”

Take then, from their hands, this symbol of so many hopes, and so much good ; and remember that on you, and such as you, it rests to disappoint or consummate them all.

WHAT WAS SAID OF MR. CHOATE THIRTY YEARS AGO.

It is very interesting to observe in the hour of a very great man's culmination, what men said about him, in the successive stages of his developement. I met, in a newspaper, the following description of "Young Rufus Choate," as he seemed to a practiced observer, when he first went to Congress.

In 1833, Honorable James Brooks, now of the New York *Express*, wrote from Washington to the Portland *Advertiser*, of which paper he was then editor, the annexed notice of Mr. Choate. It was quite different in tone from the present manner of speaking of him :

"Mr. Rufus Choate is a most promising young man from Essex District, who does not speak often, but who speaks much to the purpose. Few men in Congress command more attention. He has a well-disciplined, but, perhaps, not a brilliant, mind ; or if brilliant, he has not suffered himself to strike out many oratorical sparks in the debates in which he has participated. He argues closely, clearly, and of course forcibly. He came into Congress with a high reputation preceding him ; not always the most fortunate recommendation, for it makes critics more critical, and the public more greedy—and has thus far sustained the expectations of the public, and increased his own reputation. There is an apparent frankness, a sincerity, and sober earnestness in his manner, when he addresses the House, which is admirably calculated to make an impression, and which does always have an effect. Mr. Choate returns from the House this session, to pursue his profession of law, it is said, where there is but little doubt that he must soon be in the head and front rank at the Bar. Massachusetts will lose much in losing him from Congress—for the longer he was there, the stronger he would become."

HIS OPINION OF HENRY CLAY.

Mr. Choate always admired Henry Clay, both before and after their personal altercation in the Senate. He was himself a man too magnanimous and mighty to find his estimate of rival greatness colored by personal spleen. How he spoke of Clay, after their contest, many remarks in the foregoing Conversations show ; how he spoke of Clay, before their contest, the following extract from a letter, written by him January 15th, 1832, shows ; Mr. Clay had just made his opening speech on the Tariff. In his own peculiar chirography, and in a few compact phrases, Mr. Choate describes it, thus :

“I heard him (Mr. Clay) deliver it—his manner was studiously cool, conciliatory, winning and grave—not rhetorical, nor vehement—unlike the ‘Henry Clay’ of former days—but better than that—sound, clear, comprehensive, paternal, statesmanlike.”

HIS BENEVOLENCE.

Mr. Choate was a very benevolent and kind-hearted man ; no sufferer, no student, no charity was ever turned away empty from the doors of his large and overflowing heart. I have known him defend cases for poor and friendless women for nothing, or next to nothing, when in the same time he might have been making his fifty or a hundred or more dollars a day. Quite recently, when the Roman Catholic Association procured his services as a lecturer, he filled their house and their coffers ; but learning that their course of lectures was for the benefit of destitute boys—he gave his glittering address a free gift to them, and would take no fee.

HIS ECONOMY OF TIME.

His husbandry and economy of his time was most minute and punctual. For many of his studies and exercises, he often could only get five minutes a day ; yet that five minutes was appropriated and employed with as much severity of application as if it had been five hours.

HIS HOME MEMORIES.

Once when he was away from home, trying a heavy case, during the time I knew him, he was taken very sick. A nurse was employed. As the fevered patient lay tossing on his bed, during the long watches of the weary night, he suddenly stopped his uneasy motions, and thanked the nurse for her assiduous care ; " But," said he, " I want you to take your sewing, and sit so by the bed-side ; *for that's the way I remember my mother used to sit.*"

THE MUSIC OF THE UNION.

I have been told by a Californian that Choate's political Letter with the famous phrase, " We carry the flag and keep step to the music of the Union," and the phrase itself, contributed more than any other one thing to secure the electoral vote of California to Mr. Buchanan. One half of the emigration from the old States being from New England alone, where Choate was well known, and he being an old-line Whig, they followed his counsel. His Letter was sent broad-cast to every gulch, cañon, and mining town in California.

CRITICISMS UPON MR. CHOATE.

I have heard it suggested that this great orator-advocate had a vicious habit of *memoriter* speaking. But this is not true ; he wrote the greater part of his speeches and arguments, but he never laboriously *learned* what he wrote. He wrote, to fix and make certain his own thought. Having written, it would not much have troubled him to find his writing burned up.

I have seen him, in the discussion of an interlocutory point, write up to the very instant of rising to reply ; and then make an oratoric argument, every word of which seemed exact and elaborate, yet he had had no chance to commit any thing to memory.

Again, it has been said that he never, like Webster, rested his case on its single great points, but argued every point, big or little, bearing on the issue.

But he *knew* the great points, where they were, and what they were. He *could* rest on them. I have heard him do up in an hour the case of a month. I have heard him in a great patent case, after his adversary had argued four days, say, "I lay out of the case three days of this argument as immaterial ;" and then proceed to discuss *only* the narrower issue.

In a Railroad collision case, when his adversary quoted law and principle for hours, I have known him take one decision, abandon all else, and say so—then concentrate all his energies on that ; and resting on that, *ravaye* his enemy's argument with desolating energy. But, he said in private, I have been so often disappointed in the sudden turn which jurors' minds take, I have proved them false on such trivial points, that, as I grow older, I argue *every* point, even at the risk of tedium.

If it be said that Webster always rested on a few broad propositions ; it must be remembered that Webster did not so often argue hard cases.

Some, noticing his careless attire, have thought him *slovenly* in dress ; but he was only careless, never slovenly ; his clothes were never dirty, nor snuffy ; not ill made, but made of the best material, costly and often renewed. He was careless, as a greatly occupied mind would be ; as Bonaparte would be. His ideal was neat and tidy. He took care of minutia. His linen was always clean, even his nails, that sure mark of a gentleman, were daily attended to. His boots looked clumsy, but his feet were very large ; and his great heats of body and blood in speaking, compelled him to wear over them an India rubber cover, which made them even clumsier.

He went to his office always through narrow lanes, straight as the crow flies, he went ; but it was to escape interruption, and to avoid obstruction he shunned thoroughfares.

While it is conceded that Mr. Choate was unrivaled as an advocate, and in all those accomplishments and acquisitions which are necessary for the successful management of a cause ; there have been attempts to criticise his style of argument and mode of managing a case. To me it always seemed that, in his style of procedure, he was beyond and above description or criticism. He had no prototype ; and any imitation would be only a *travestie*. He was his own original ; and when you say that his oratory was too impassioned and too studied, "with too little of the simple, colloquial talk to the jury," you are only repeating a truism, and saying that all this was Choate. Whether his addresses to the jury were simple or studied, the panel understood them ; and the admiration was shared by Court,

Bar, and spectators. One great peculiarity of this man's oratory was, that he equally affected the plain twelve men of the Jury—the learned Bench—old gray-haired attorneys—elegant scholars—cold and passionless officials—ingenious students of Law—grave divines—and that motley collection of listeners in the gallery and outside of the bar, who may be considered to constitute the people.

In an age of Law Reform, it has been said he took no part in its reformation. He did take a part. It was the part of wisdom. In the Massachusetts Constitutional Convention he opposed with great power and effect the making of Judges, elective. He argued this in private and in public; he told the hostile body that if they would *only spare the judges*, he would be silent under all else they might do. He reasoned, implored, oratorized on this; the integrity and the impartiality of the Judicial magistrate; and he, more than any other one man, contributed to prevent the insertion of this elective provision into the new Constitution, and to educate the public mind of Massachusetts upon this great and vital subject.

THE LIKENESS OF RUFUS CHOATE.

When the photograph Portrait from which the engraving in this volume is taken, first appeared, the following criticism upon Choate and it, was published in a New York newspaper. It adds two or three verbal descriptive touches to the lines of the portrait, as we see it before us, in the engraving.

Physically, Mr. Choate is lank, hollow-visaged and ungainly; but there is that, nevertheless, in his face which reports a vigorous and brilliant intellect. Most artists would be tempted to smooth over his physical defects, but the sun is impartial, and we have in this picture the man exactly as

he is. The full figure is seen, seated in an arm-chair, with his right arm resting on a table, admirably expressing in its whole position—in the loose hang of the hands and the set of the garments, entire lassitude and physical dejection; the coat is fastened negligently by a single button, the standing collar is flaring and wilted, and the cravat meets in an indescribable knot that looks like the fortuitous conjunction of original atoms. The almost coffee-colored face is deeply marked; but in this, with its luminous eyes and the background of wild and fantastic hair, is found the physical expression of Choate's fascinating power.

As long as men are inspired and raised to higher levels of motive and of action, by noble thoughts, by kindling and liberal sentiments, by the spectacle of a splendid accomplishment and unfaltering toil,—so long will this man's life tend to lift them into a region of impulse far above the low and poor springs of motive which too often rule mankind.

He is gone; and to those who saw him daily, the world loses some of its sunlight. Never more shall we see that rich smile glittering across those somber features; those deep eyes, shining with all the romance of their sentiment, as the majesty of intellect lifts and widens that furrowed brow; never more behold that strong form dilating with the shock of his nervous energy; and never more shall we hear that strange Eloquence, in whose words, always poetic and often scriptural, the passion of the Italian and the fervor of the Hebrew muse combined to take captive the imagination and the impulse of men.

Like William Pinkney, this most rare genius will soon be but a splendid tradition; for those who only read his Speeches will never know, or even conjecture, how he uttered them.

CHAPTER X.

FANEUIL HALL IN MOURNING FOR HIM, AND EDWARD EVERETT'S EULOGY.

ON the twenty-third day of July, 1859, Faneuil Hall was thrown open at mid-day, that the citizens of Boston might assemble to think over and mourn the death of Rufus Choate.

To give due effect to the solemn occasion, the great Hall was appropriately arrayed in habiliments of mourning. The light of day was excluded, to yield additional effect to the somber colors. From the center of the ceiling to the capitals of the pillars, and along the fronts of the galleries, winding up the tall columns, covering the rostrum and the gilded work and frames behind it, were festoons and draperies of black alpacca and white bunting mixed and interranged. From the back of the eagle in the front gallery, lines of crape descended and festooned the front of the galleries. The Rostrum was covered with crape, and black and white crape was appropriately disposed in the rear. On the south side of the rostrum was a portrait of Choate, painted by Ames. The Hall was lighted with gas, and the whole arrangement was most effective and appropriate.

Addresses were made by several gentlemen ; Mr. Everett's address closed the meeting. It was uttered with tones of heartfelt sorrow, and gave full expression to the feeling of the citizens. During its delivery, a solemn

silence and stillness prevailed. The audience seemed reluctant to applaud, lest it should break harshly upon their expressions of grief. At one passage, however,—that describing *the sounding of the imperial clarion*—the people were unable to maintain their silence ; the noble energy of its delivery so revived all their recollections of the dashing vehemence of Mr. Choate himself.

The Address is here printed. It was kindly revised for the author by Mr. Everett himself.

ADDRESS OF MR. EVERETT, REVISED BY HIMSELF.

Mr. Mayor and Fellow Citizens : I obey the only call which could with propriety have drawn me at this time from my retirement, in accepting your invitation to unite with you in the melancholy duties which we are assembled to perform. While I speak, sir, the lifeless remains of our dear departed friend are expected—it may be have already returned to his bereaved home. We sent him forth, but a few days since, in search of health ; the exquisite bodily organization overtasked and shattered, but the master intellect still shining in unclouded strength. Anxious, but not desponding, we sent him forth, hoping that the bracing air of the ocean which he greatly loved, the respite from labor, the change of scene, the cheerful intercourse, which he was so well calculated to enjoy with congenial spirits abroad, would return him to us refreshed and renovated ; but he has come back to us dust and ashes, a pilgrim already on his way to

“The undiscovered country from whose bourne
No traveler returns.”

How could I refuse to bear my humble part in the tribute of respect which you are assembled to pay to the mem-

ory of such a man ; a man not only honored by me in common with the whole country, but tenderly cherished as a faithful friend, from the morning of his days, and almost from the morning of mine ; one with whom through life I was delighted to take sweet counsel—for whom I felt an affection never chilled for a moment, during nearly forty years since it sprung up. I knew our dear friend, sir, from the time he entered the Law School at Cambridge. I was associated with him as one of the Massachusetts delegation in the House of Representatives of the United States, between whom and myself there was an entire community of feeling and opinion on all questions of men and measures, and with whom, in these later years, as his near neighbor, and especially when illness confined him at home, I have enjoyed opportunities of the most intimate social intercourse. Now that he is gone, sir, I feel that one more is taken away of those most trusted and loved, and with whom I had most hoped to finish the journey ; nay, sir, one whom, in the course of nature, I should have preceded to its end, and who would have performed for me the last kindly office, which I, with drooping spirit, would fain perform for him.

But although with a willing heart I undertake the duty you have devolved upon me, I can not but feel how little remains to be said. It is but echoing the voice which has been heard from every part of the country—from the Bar, from the Press, from every association from which it could with propriety be uttered—to say that he stood at the head of his profession in this country. If, in his own or in any other part of the Union, there was his superior in any branch of legal knowledge, there was certainly no one who united, to the same extent, profound learning in the law with a range almost boundless of miscellaneous

reading, reasoning powers of the highest order, intuitive quickness of perception, a wariness and circumspection never taken by surprise, and an imagination which rose on a bold and easy wing to the highest heaven of invention. These powers, trained by diligent cultivation—these attainments, combined and applied with sound judgment, consummate skill, and exquisite taste, necessarily placed him at the head of the profession of his choice, where, since the death of Mr. Webster, he shone without a rival. With such endowments formed at the best schools of professional education, exercised with unwearied assiduity, through a long professional life, under the spur of generous ambition, and the heavy responsibility of an ever-growing reputation to be sustained,—if possible to be raised,—he *could* fill no second place.

But he did not, like most eminent jurists, content himself with the learning and the fame of his profession. He was more than most men in any profession, in the best sense of the word, a man of letters. He kept up his academical studies in after life. He did not think it the part either of wisdom or good taste to leave behind him at school, or at college, the noble languages of the great peoples of antiquity ; but he continued through life to read the Greek and Roman classics. He was also familiar with the whole range of English literature ; and he had a respectable acquaintance with the standard French authors. This wide and varied circle of reading not only gave a liberal expansion to his mind, in all directions, but it endowed him with a great wealth of choice but unstudied language, and enabled him to command a richness of illustration—whatever subject he had in hand—beyond most of our public speakers and writers. This taste for reading was formed in early life.

While he was at the Law School at Cambridge, I was accustomed to meet him more frequently than any other person of his standing, in the alcoves of the library of the University. As he advanced in years and acquired the means of gratifying his taste in this respect, he formed a miscellaneous collection, probably as valuable as any other in Boston ; and he was accustomed playfully to say that every Saturday afternoon, after the labor of the week, he indulged himself in buying and bringing home a new book. Thus reading with a keen relish, as a relaxation from professional toil, and with a memory that nothing worth retaining escaped, he became a living store-house of polite literature, out of which, with rare facility and grace, he brought forth treasures new and old, not deeming these last the least precious.

Though living mainly for his profession, Mr. Choate engaged to some extent in public life, and that at an early age, as a member of the Legislature of Massachusetts, and of the national House of Representatives, and in riper years as a Senator of the United States, as the successor of Mr. Webster, whose entire confidence he enjoyed, and whose place he, if any one, was not unworthy to fill. In these different positions he displayed consummate ability. His appearance, his silent demeanor in either House of Congress commanded respect. He was one of the few whose very presence in a public assembly is a call to order. In the daily routine of legislation he did not take an active part. He rather shunned clerical work, and consequently avoided, as much as duty permitted, the labor of the committee room ; but on every great question that came up while he was a member of either House of Congress, he made a great speech ; and when he had spoken there was very little left for any one else to say on the same side of

the question. I remember, on one occasion, after he had been defending, on broad national grounds, the policy of affording a moderate Protection to our native industry, showing that it was not merely a local but a national interest, and seeking to establish this point by a great variety of illustrations, equally novel and ingenious, a Western member, who had hitherto wholly dissented from this view of the subject, exclaimed that he "was the most persuasive speaker he had ever heard."

But though abundantly able to have filled a prominent place among the distinguished active statesmen of the day, he had little fondness for political life, and no aptitude whatever for the out-doors management ; for the electioneering legerdemain ; for the wearisome correspondence with local great men ; and the heart-breaking drudgery of franking cart-loads of speeches and public documents to the four winds, which are necessary at the present day to great success in a political career. Still less adroit was he in turning to some personal advantage whatever topic happens for the moment to attract public attention ; fishing with ever freshly baited hook in the turbid waters of an ephemeral popularity. In reference to some of the arts, by which political advancement is sought and obtained, he once said to me, with that well-known characteristic look, in which sadness and compassionate pleasantry were about equally mingled "They did not do such things in Washington's days."

If ever there was a truly disinterested patriot, Rufus Choate was that man. In his political career there was no shade of selfishness. Had he been willing to purchase advancement at the price often paid for it, there never was a moment, from the time he first made himself felt and known, that he could not have commanded any thing which any party could bestow. But he desired none of

the rewards or honors of success. On the contrary he, not only for his individual self, regarded office as a burden—an obstacle in the way of the cultivation of his professional and literary tastes—but he held that of necessity, and in consequence of the strong tendency of our parties to assume a sectional character, conservative opinions, seeking to moderate between the extremes which agitate the country, must of necessity be in the minority ; that it was the “mission” of men who hold such opinions, not to fill honorable and lucrative posts which are unavoidably monopolized by active leaders, but to speak prudent words on great occasions, which command the respect, if they do not enlist the sympathies, of both the conflicting parties, and thus insensibly influence the public mind. He comprehended and accepted the position ; he knew that it was one liable to be misunderstood, and sure to be misrepresented at the time ; but not less sure to be justified when the interests and passions of the day are buried, as they are now for him, beneath the clods of the valley.

But this ostracism, to which his conservative opinions condemned him, produced not a shade of bitterness in his feelings. His patriotism was as cheerful as it was intense. He regarded our confederated republic, with its wonderful adjustment of State and Federal organization ;—the States bearing the burden and descending to the details of local administration, the General Government moulding the whole into one grand nationality, and representing it in the family of nations,—as the most wonderful phenomenon in the political history of the world. Too much of a statesman to join the unreflecting disparagement, with which other great forms of national polity are spoken of in this country, he yet considered the oldest, the wisest, and the most successful of them, the British Constitution, as a

far less wonderful political system than our confederated republic.

The territorial extent of the country ; the beautiful play into each other of its great commercial, agricultural, and manufacturing interests ; the material prosperity, the advancements in arts, and letters, and manners already made ; the capacity for further indefinite progress in this vast theater of action, in which Providence has placed the Anglo-American race, stretching from the Atlantic to the Pacific, from the Arctic Circle to the Tropics, were themes on which he dwelt as none but he could dwell ; and he believed that with patience, with mutual forbearance, with a willingness to think that our brethren, however widely we may differ from them, may be as honest and patriotic as ourselves, our common Country would eventually reach a height of prosperity of which the world as yet has seen no example.

With such gifts, such attainments, and such a spirit, he placed himself, as a matter of course, not merely at the head of the Jurists and Advocates, but of the public Speakers of the country. After listening to him at the Bar, in the Senate, or upon the academic and popular platform, you felt that you had heard the best that could be heard in either place. That mastery which he had displayed at the forum and in the deliberative assembly was not less conspicuous in every other form of public address. As happens in most cases of eminent jurists and statesmen, possessing a brilliant imagination and able to adorn a severe course of reasoning with the charms of a glowing fancy and a sparkling style, it was sometimes said of him, as it was said before him of Burke and Erskine, of Ames and Pinkney—that he was more of a rhetorician than a logician, that he dealt in words and figures of speech more

than in facts or arguments. These are the invidious comments, by which dull or prejudiced men seek to disparage those gifts which are furthest from their own reach.

It is perhaps by his discourses on academical and popular occasions that he is most extensively known in the community, as it is these which were listened to with delighted admiration by the largest audiences. He loved to treat a purely literary theme ; and he knew how to throw a magic freshness—like the cool morning dew on a cluster of purple grapes—over the most familiar topics at a patriotic celebration. Some of these occasional performances will ever be held among the brightest gems of our literature. The eulogy on Daniel Webster at Dartmouth College, in which he mingled at once all the light of his genius and all the warmth of his heart, has, within my knowledge, never been equaled among the performances of its class in this country for sympathetic appreciation of a great man, discriminating analysis of character, fertility of illustration, weight of sentiment, and a style at once chaste, nervous, and brilliant. The long sentences which have been criticised in this, as in his other performances, are like those which Dr. Channing admired and commended in Milton's prose—well compacted, full of meaning, fit vehicles of great thoughts.

But he does not deal exclusively in those ponderous sentences. There is nothing of the artificial Johnsonian balance in his style. It is as often marked by a pregnant brevity as by a sonorous amplitude. He is sometimes satisfied, in concise epigrammatic clauses, to skirmish with his light troops and drive in the enemy's outposts. It is only on fitting occasions, when great principles are to be vindicated and solemn truths told ; when some moral or political Waterloo or Solferino is to be fought, that he

puts on the entire panoply of his gorgeous rhetoric. It is then that his majestic sentences swell to the dimensions of his thought ; that you hear afar off the awful roar of his rifled ordnance ; and when he has stormed the heights and broken the center, and trampled the squares, and turned the staggering wings of the adversary, that he sounds his imperial clarion along the whole line of battle and moves forward with all his hosts in one overwhelming charge.

Our friend was, in all the personal relations of life, the most unselfish and disinterested of men. Commanding from an early period a valuable clientage, and rising rapidly to the summit of his profession, and to the best practice in the Courts of Massachusetts and in the Supreme Court of the United States, with no expensive tastes or habits, and a manner of life wholly unostentatious and simple, advancing years overtook him with but slender provision for their decline. He reaped little but fame where he ought to have reaped both fame and fortune. A career which in England would have been crowned with affluence, and probably with distinguished rank and office, found him at sixty chained to the treadmill of laborious practice.

He might, indeed, be regarded as a martyr to his profession. He gave to it his time, his strength, and neglecting due care of regular bodily exercise and occasional entire relaxation, he might be said to have given to it his life. He assumed the racking anxieties and feverish excitements of his clients. From the Courts, where he argued the causes entrusted to him with all the energy of his intellect, rousing into corresponding action an overtasked nervous system, these cares and anxieties followed him to the weariness of his midnight vigils, and the unrest of his sleepless pillow. In this way he led a long professional career, worn

and harassed with other men's cares, and sacrificed ten added years of active usefulness to the intensity with which he threw himself into the discharge of his duties in middle life.

There are other recollections of our friend's career—other phases of his character on which I would gladly dwell ; but the hour has elapsed and it is not necessary. The gentlemen who have preceded me, his professional brethren, his pastor, the press of the country, generously allowing past differences of opinion to be buried in his grave, have more than made up for any deficiency in my remarks. His work is done ; nobly, worthily done. Never more in the temples of justice—never more in the Senate Chamber—never more in the crowded assembly—never more in this consecrated Hall, where he so often held listening crowds in rapt admiration, shall we catch the unearthly glance of his eye or listen to the strange sweet music of his voice. To-morrow we shall follow him—the pure patriot, the consummate jurist, the eloquent orator, the honored citizen, the beloved friend—to the last resting place ; and who will not feel, as we lay him there, that a brighter genius and a warmer heart are not left among living men !

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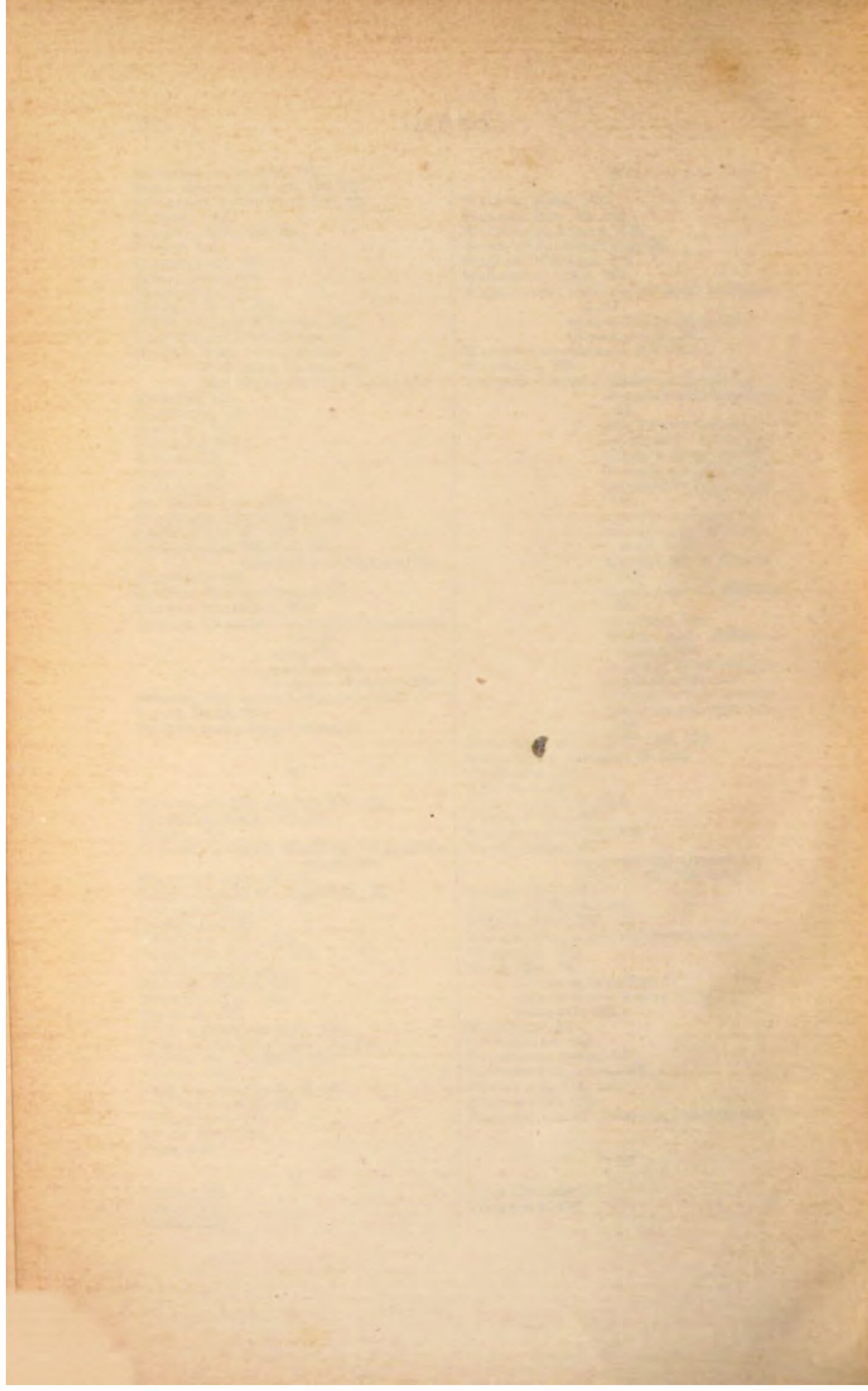
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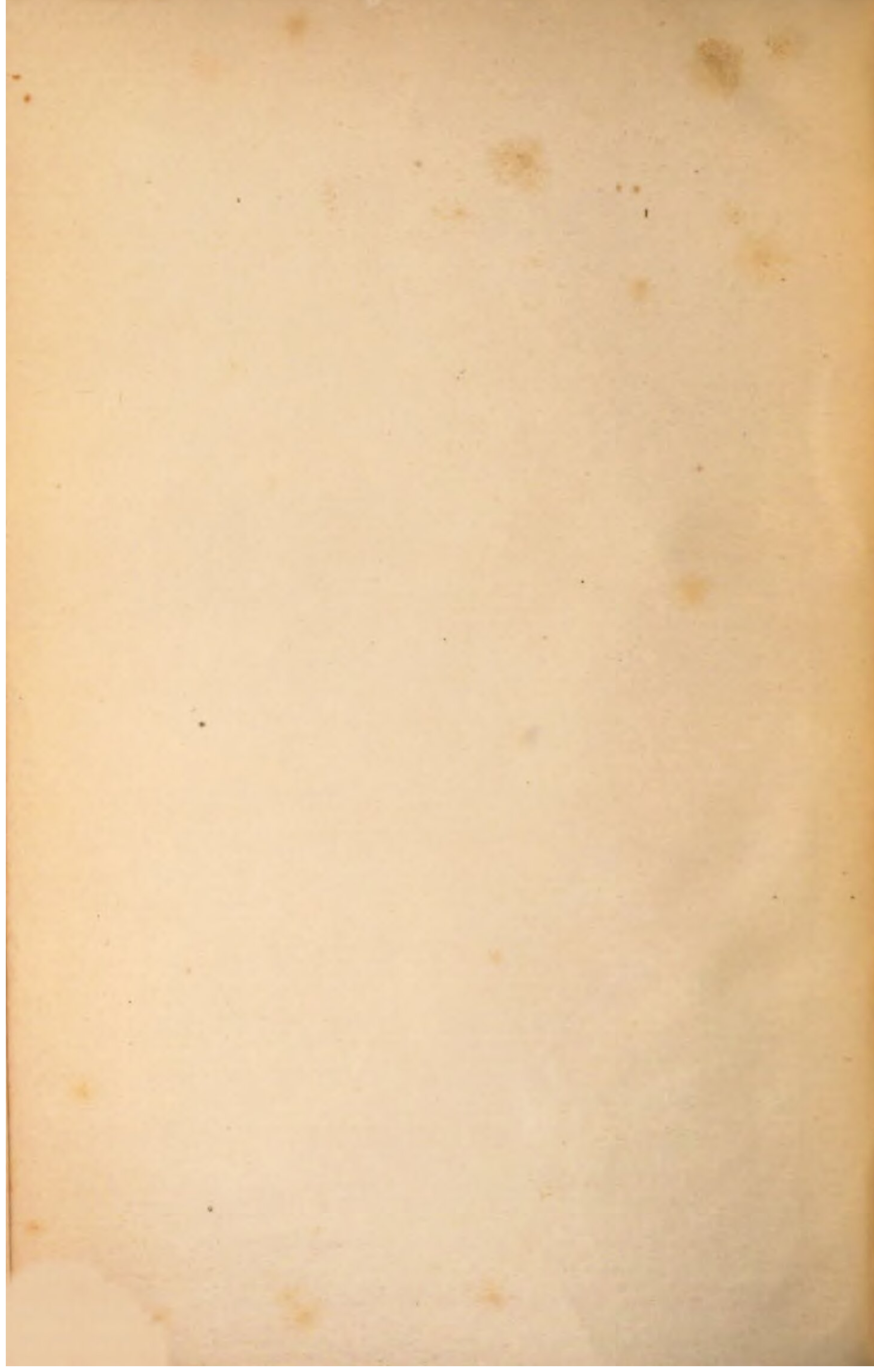
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